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Law on Banks and Credit

92BA0769A Sofia DURZHAVEN VESTNIK
in Bulgarian No 25, 27 Mar 92 pp 1-8

["Text" of the Law on Banks and Credit, adopted by the National Assembly on 18 March 1992 and signed by National Assembly Chairman Stefan Savov]

[Text]

Ukase No. 79
of President of the Republic Zhelyu Zhelev
issued in Sofia on 25 March 1992
and sealed with the state seal

On the basis of Article 98, Item 4 of the Constitution of the Republic of Bulgaria, I hereby decree that the Law on Banks and Credit, adopted by the 36th National Assembly on 18 March 1992, be published in DURZHAVEN VESTNIK.

LAW ON BANKS AND CREDIT

Chapter 1

General Provisions

Article 1. (1) A bank is a juridical person organized as a corporation or a cooperative that has been issued a license, under the conditions and procedures stipulated in the present law, to engage in the business of accepting deposits, making loans, and other bank activities.

(2) Bank activities comprise the following:

1. Accepting money from other individuals for deposit (bank deposit contracts);

2. Granting cash loans and time drafts (bank credit contracts);

3. Purchasing bills of exchange and notes (discount transactions);

4. Transactions involving foreign payment instruments and precious metals;

5. Accepting deposits for the handling of securities of third individuals (deposit transactions);

6. Purchasing and selling securities (transactions in securities);

7. Accepting warranties, guarantees, and other securities (guarantee transactions);

8. Engaging in operations involving noncash payments and checking-account clearing operations for other individuals (checking-account transactions);

9. Conducting commission and brokerage transactions in managing capital investment funds and assisting in the purchase of shares of domestic and international investments;

10. Acquiring rights on amounts owed for the procurement of goods or services and assuming the risk of their eventual default;

11. Other similar activities as defined by the Bulgarian National Bank, subsequently referred to as the "Central Bank."

(3) Banks may not engage in commercial transactions other than those indicated in Paragraph 2 unless this is deemed necessary in connection with the conclusion of bank transactions or in the course of collecting claims on loans.

(4) By permission of the Central Bank, bank transactions as per Paragraph 2, Items 3, 4, 6, 7, 9, and 10 may be professionally carried out by other individuals as well. Such individuals must observe only the provisions of Chapters 1, 3, 9, 10, 11, 13, and 14; in the case of individuals engaged in transactions as per Paragraph 2, Item 4, and Article 25, the conditions for obtaining licenses are defined in the regulations issued by the Central Bank.

Article 2. The following are exempt from the provisions of this law:

1. The Central Bank, whose activities are governed by a separate law;

2. Insurance institutions, with respect to their transactions that are regulated with a separate law;

3. The postal system, with respect to cash operations characteristic of its activities;

4. Social and health insurance institutions;

5. Associations for home-building savings and loans, the activities of which are regulated by a separate law;

6. Individuals who make cash loans in exchange for collateral (pawnbrokers).

Article 3. The provisions of this law also apply to banks created on the basis of a separate law, unless that law stipulates otherwise.

Chapter 2

Establishment and Management

Article 4. Banks are established, managed, reorganized, or closed down in accordance with the legally established procedure based on existing legislation, unless this law stipulates otherwise.

Article 5. Shares issued by the bank, which give voting rights to their owner, are nominal and are registered in the shareholders' record.

Article 6. In addition to the data stipulated in the pertinent laws, the bank statutes must include data on bank transactions to be carried out, authorizations for signing for and representing the bank, and data on the procedure to be used in internal bank control.

Article 7. The bank is managed and represented jointly by no fewer than two individuals. Such individuals may not assign the overall management and representation of the bank to only one of them but may authorize third individuals to conduct specific activities.

Article 8. (1) An individual mentioned in the preceding article must meet the following requirements:

1. Be a permanent resident of the country;
2. Have higher education;
3. Have the necessary professional experience in banking;
4. Not have been sentenced for committing a premeditated felony;
5. Not have been a member of any executive or control authority or an associate with unlimited liability in a company that has been terminated for bankruptcy, if all creditors have not been paid in full.
6. Not have been deprived of the right to hold materially responsible positions;
7. Not be a spouse or a relative twice removed, by blood or marriage, of another member of the administrative or control authority of the bank.

(2) An individual who does not meet the requirements stipulated in Paragraph 1 must be relieved of such positions by decision of the Central Bank if the competent authority has not relieved him of his position within two months of the written warning issued by the Central Bank.

Chapter 3

Granting or Withdrawing Permission (License) To Engage in Bank Activities

Article 9. (1) Permission in writing (license) from the Central Bank is required to engage in banking activities as per Article 1, Paragraph 2. Such a license may be issued for all or some bank activities as stipulated in Article 1, Paragraph 2.

(2) The request for obtaining a bank license must be accompanied by the following documents:

1. Statutes and other constituent acts;
2. Data on deposited (transferred) capital;
3. Plan for the bank's business activities;
4. Names and addresses of individuals who will manage and represent the bank, and information concerning their qualifications and professional experience in banking;
5. Data on individuals who will own or have registered shares that will give them more than 1 percent of the vote at general shareholder meetings;
6. Any other information as stipulated by the Central Bank.

Article 10. In addition to the documents stipulated in Article 9, Paragraph 2, a foreign bank must submit the following documents in order to obtain a license to open a branch in the country:

1. The annual financial report of the foreign bank for three consecutive years;

2. The written agreement for opening a branch by the bank supervisory authority of the country where the foreign bank has its seat, should this be required by the legislation of that country.

Article 11. The commercial representatives of a foreign bank in the country must submit to the Central Bank a transcript of the registration act within 14 days of its issuance. These representatives may not engage in bank transactions.

Article 12. (1) Before ruling on a request for a license, the Central Bank must make all the necessary studies in order to establish the authenticity of the submitted documents, the financial status of the petitioner, the professional qualification and experience of individuals authorized to manage and represent the bank, and the need for the activities in which the bank intends to engage.

(2) Within six months of receipt of the petition with its addenda and, if additional information has been requested, the receipt of such information, the Central Bank shall issue the license or inform the petitioner of its refusal.

(3) A license for bank activities may exclude transactions or activities for which the Central Bank has determined that the petitioner is unqualified.

(4) The issued licenses are recorded in a special register kept by the Central Bank.

Article 13. (1) A bank that has obtained a license in accordance with this law may engage in bank operations only if it has suitable premises and the required technical equipment.

(2) The premises as per the preceding paragraph must be consistent with the regulations concerning their security and protection as defined by the minister of internal affairs and the Central Bank.

Article 14. (1) The Central Bank may refuse a license in the following cases:

1. If the statutes and other constituent acts are in violation of this or any other law;
2. If the activities in which the petitioner intends to engage do not meet local needs or the interests of the Bulgarian economy;
3. If the bank's capital and the paid-up part of the capital violate the provisions of Article 21;
4. If the statutes include provisions that do not guarantee the safety of deposited assets;
5. If some of the individuals authorized to manage and represent the bank are unable to assume their positions because of legal prohibitions or fail to meet the requirements of Article 8, Paragraph 1;
6. If some of the shareholders who control more than 10 percent of the vote could, by virtue of their activities or influence on decisionmaking, harm the reliability or security of the bank or its operations.

(2) In the cases stipulated in Paragraph 1, Items 1, 3, 4, and 5, the Central Bank may refuse a license only if the petitioner has failed to eliminate the inconsistencies within the stipulated deadline, which may not be shorter than one month.

Article 15. In the case of a refusal as per the preceding article, the petitioner may file a new request for a license for banking activities not sooner than six months from the enactment of the refusal resolution or from the elapsing of the deadline stipulated in Article 12, Paragraph 2 in cases of silent refusal.

Article 16. (1) Any individual who does not have a license to engage in bank activities as per Article 1, Paragraph 2, Items 1, 2, 5, and 8 may not use in his name, advertising, or any other activities the word "bank" or any of its derivatives in a foreign language or any other word denoting bank activities.

(2) The prohibition as per the preceding paragraph does not apply to institutions whose name has been established or acknowledged by law or international agreement to which the Republic of Bulgaria is a party, or when the context in which the word "bank" has been used makes it clear that the institution's object of activities does not include banking transactions.

(3) No license may be issued to engage in bank activities under a name similar to the name of an existing bank in the country or abroad.

Article 17. (1) A local or foreign person or economically related persons, spouses, or relatives by blood or marriage up to three times removed may not, without permission of the Central Bank, directly or indirectly acquire stock in a local bank that would give them more than 5 percent of the total number of votes in a general shareholders meeting.

(2) Without the permission of the Central Bank, the bank has no right:

1. To purchase from a nonfinancial enterprise stock, shares, or any other participation, the value of which exceeds 10 percent of the enterprise's capital;

2. To open branches abroad;

3. To change its name as listed in the license;

4. To be reorganized through merger, acquisition, division, or transformation into a different type of corporation;

5. To engage in bank transactions beyond the scope of the issued license.

(3) The provisions of Paragraph 2, Item 1 do not apply if the stock and shares have been acquired as repayment of loans. In that case, the bank must transfer the thus-acquired stock and shares that exceed 10 percent of the enterprise's capital within a period of three years.

(4) The Central Bank must review a petition for a license as per Paragraphs 1 and 2 within three months of its receipt.

(5) Transactions or activities as per Paragraphs 1 and 2 conducted without license are declared invalid and are voided by the court at the request of the prosecutor, the Central Bank, or any other interested party.

Article 18. The okrug court registers the bank and records the changes as per Article 17, Paragraph 2 on the basis of a presentation of the respective licenses issued by the Central Bank.

Article 19. (1) The Central Bank may withhold temporarily, for a period of up to six months, or permanently any issued license if its owner:

1. Does not undertake to engage in licensed bank activities within 12 months of the date the license was issued;

2. Does not engage in activities consistent with the conditions set for issuing a license or the steps required by the Central Bank in accordance with Article 56;

3. Has provided false information as a basis for obtaining a license;

4. Engages in bank activities in violation of this law or any other legal acts;

5. Is a foreign bank that has lost its right to engage in banking activities in the country where its headquarters is located.

(2) A license may be revoked by decision of the Central Bank. In the cases stipulated in Paragraph 1, Items 2-5, with such a decision, a supervisor is appointed to supervise the activities of the bank until a liquidator has been appointed and for the period of time for which the license was revoked.

(3) The supervisor determines whether the bank's operations are in accordance with the existing legal acts. He may stop the execution of a resolution of the bank's administrative bodies should they conflict with the legal acts, or demand that all or any bank transaction he stipulates be carried out with his agreement.

Article 20. Following the enactment of a decision to revoke a license, the Central Bank immediately sends a copy of the decision to the respective court to open a case for closing down the bank; it publishes its decision in DURZHAVEN VESTNIK and takes other necessary measures to inform the public of the revocation of the license.

Chapter 4

Owned Capital, Liquidity, and Other Requirements

Article 21. (1) To guarantee funds and other securities entrusted to it by its creditors, any bank or bank group must have at all times its own capital, the minimal amount of which, its structure, and its correlation with its balance sheet of assets and liabilities must be determined by the Central Bank in accordance with the extent of conducted bank transactions and must be published in DURZHAVEN VESTNIK.

(2) The amount of bank capital may not be less than 8 percent of the bank's risk assets.

Article 22. (1) The bank must set aside no less than one-fifth of its profits after taxes and before issuing the dividends for the establishment of its reserve fund, until the assets in the fund reach 1.25 percent of the sum total of the balance sheet of assets and assumed guarantees and other securities.

(2) Should the assets of the reserve fund drop below the minimal amount stipulated in Paragraph 1, the bank, within the next three years, must replenish the assets of the fund until the minimum levels have been reached.

(3) The assets of the reserve fund may be used to cover losses stemming from bank activities only after the special reserves as per Article 26 have been exhausted.

Article 23. The bank must keep minimum liquid funds in a ratio and under conditions periodically defined by the Central Bank.

Article 24. If the cash funds of the bank drop below the level stipulated in Article 23, the bank must pay for loans granted to it by the Central Bank to cover the shortage until said shortage is covered, and interest of no more than 18 percent over and above the interest rate charged by the Central Bank for interbank loans is paid.

Article 25. The bank must maintain a difference between its assets and liabilities in foreign currency in an amount not exceeding the amount stipulated by the Central Bank, as a percentage of the bank's own capital.

Article 26. Banks must set aside funds from their profits before taxes and into special reserve funds to cover nonrecoverable or questionable loans. The Central Bank determines the criteria for the classification of funds owed as either uncollectable or questionable, as well as the ratio of the special reserves and the overall amount of such claims.

Article 27. Banks may not issue dividends before setting aside the necessary assets for the reserve fund and for the special reserves as per Article 26.

Article 28. (1) Direct or indirect loans, credit facilities, or guarantees exceeding 15 percent of the bank's own capital may be granted to a single individual or to economically related individuals (big loans) by decision of the individuals who manage and represent the bank.

(2) Big loans made by the bank or a bank group may not exceed 25 percent of its own capital.

(3) The total amount of big loans that have been granted may not exceed the bank's own capital by a factor of eight.

(4) The restrictions of Paragraphs 2 and 3 do not apply in the following cases:

1. When transactions are secured with a collateral or a mortgage with a determinable market price, fully covered by insurance, and the value of the collateral is no less than 25 percent higher than the amount of the secured debt;

2. In the case of loans made to the state or guaranteed by the state;

3. In all other cases as stipulated by the Central Bank.

Article 29. (1) The sum of bank investments in real estate, equipment, stocks, and shares in nonfinancial enterprises may not exceed the sum of its own capital as stated in its books.

(2) The provisions of the preceding paragraph do not apply to real estate, equipment, stock, or shares acquired by the bank from sales of mortgages, collateral, or other securities, with a view to preventing bank losses, provided they are transferred within a period of three years of their acquisition.

Chapter 5

Relations Between Banks and Customers

Article 30. (1) Banks may extend reciprocal credit through cash deposits, security purchases, or any other means stipulated by the Central Bank.

(2) Without violating bank secrecy, the banks may provide the necessary information related to bank services to their customers.

Article 31. The Central Bank assists in developing an information system on the creditworthiness of bank customers, information that may be used by the banks under the conditions of Article 30, Paragraph 2.

Article 32. (1) Interest on loans and cash deposits must be agreed upon between borrowers or depositors and the banks on the basis of the base interest rate set by the Central Bank and the supply and demand for loans, the solvency of the borrower, the length of the loan or deposit, and other circumstances.

(2) Interest rates on foreign currency loans and deposits must be agreed upon in accordance with the status of the international credit markets and on the basis of supply and demand for credit in the country.

Article 33. (1) A bank may accept a cash deposit only on the basis of publicly announced conditions, which must be the same for all depositors.

(2) Such conditions must include:

1. Interest rates and method of interest computation if the periodical interest obligations do not constitute a proportional part of the annual interest rate;

2. The periods when interest payments are due, and data as to whether the interest rate is or is not variable;

3. The minimum amount accepted for deposit;

4. The minimum time during which a deposit may not be withdrawn or may be withdrawn, but with subsequent loss of the entire amount of interest earned or a part thereof;

5. Deductions from interest due;

6. The amount to which deposits are ensured or guaranteed by the existing system set for this purpose.

Article 34. (1) In granting a loan, the bank must inform the customer, free of charge, of the regulations governing business transactions, which must include the following:

1. Data on the general loan costs (interest, fees, commission, and so forth) and the objective criteria on the basis of which such costs may change;

2. The method for calculating the interest if the periodical interest payments are not a proportional part of the annual interest rate;

3. Additional obligations related to payments;

4. The amount of the actual interest rate, computed in accordance with the method set by the Central Bank.

(2) In consumer loans, the bank must issue to the borrower, in writing, information on the offered current interest rate computed as the annual interest rate, the amount of the sum owed by the borrower, the criteria for determining the floating interest rate, if such has been used, and any other costs.

(3) If the borrower has used credit over and above the one agreed upon in advance with the bank (overdraft), the bank must inform the client in writing about the interest rate applied for the corresponding period, as well as about the other costs related to the loan.

(4) The cost of loans is determined in the loan contract, which includes prepayment of the principal.

Article 35. The bank must make public the conditions governing deposits and loans in premises accessible to the customer.

Article 36. (1) In granting a loan, the bank must obtain the collateral as stipulated by the loan.

(2) An item used as collateral may remain in the possession of the individual, who must submit it under the conditions specifically agreed upon with the bank.

(3) The following may be provided in favor of the bank:

1. Collateral consisting of goods and materials circulation; the owner of the collateral has the right to process said items and to market the goods under the conditions agreed upon with the bank;

2. Collateral of goods in a state of turnover, in which the borrower has the right to sell the collateral under the conditions agreed upon with the bank.

Article 37. If a loan is in default, the bank has the right to obtain a writ of execution for a withdrawal from the account in question. The contract may stipulate that the

bank has the right to auction off the collateral in accordance with the procedure based on a regulation issued by the minister of justice and the administrative council of the Central Bank.

Article 38. The bank has the right to hold the mortgage on buildings acquired with the help of bank loans.

Article 39. Banks may demand of the borrowers accountability and other documents related to their activities, and supervise the use of the loans for their stipulated purpose and the conditions under which the goods bought with such loans are kept, as well as their quality.

Article 40. The banks make noncash payments in accordance with a procedure set by the Central Bank.

Chapter 6

Credit Restrictions

Article 41. (1) The bank may extend loans only on the basis of a resolution of its joint administrative authority and the approval of its internal control authority to the following:

1. Members of the bank's administrative and control bodies;

2. Procurators, commercial representatives, and representatives of the bank;

3. Spouses and blood relatives in direct line up to three times removed, including individuals stipulated in Items 1 and 2;

4. Stock owners of shares that give them more than 5 percent of the total number of votes in the general stockholders meeting;

5. A stockholder whose representative is a member of the bank's administrative or control authority;

6. Juridical persons whose management includes individuals as per Items 1 and 2;

7. Commercial corporations in which the bank owns more than 10 percent of stocks or shares;

8. Individuals in charge of supervising bank activities;

9. Members of the Central Bank's administrative council.

(2) The provisions of Paragraph 1 do not apply in the following cases:

1. The amount of the loan to individuals as per Paragraph 1, Items 1, 2, 3, 8, and 9 does not exceed their annual remuneration;

2. The amount of the loan granted to individuals as per Paragraph 1, Items 4, 5, 6, and 7 is less than 1 percent of the deposited bank capital.

(3) Banks may not grant loan facilities to individuals as per Paragraph 1 that involve:

1. Transactions that, by virtue of their nature, purpose, features, or risk, may not be made by the bank with clients other than individuals as per Paragraph 1;

2. The collecting of interest, fees, or other monetary obligations or the accepting of collateral of amounts below those required of other customers.

(4) The sum of a loan granted by the bank to a bank official may not exceed his gross monthly wage by a factor of 24.

(5) The sum total of loans granted compared to the bank's deposited capital may not exceed 20 percent in the case of individuals stipulated in Article 1, and 5 percent in the case of bank officials.

Chapter 7

Special Regulations Governing Certain Deposits

Article 42. (1) Funds intended for accumulation are accepted in savings accounts. Cash amounts used for payment purposes or deposited on condition that they be withdrawn after a time stipulated in advance do not qualify as savings deposits.

(2) A bank issues a savings account book when a savings account is opened.

(3) Activities related to a savings account may be carried out only by submission of the savings account book. If the entire amount of the deposit is withdrawn, the savings account book must be surrendered to the bank.

Article 43. (1) A depositor must immediately inform the bank in writing if his savings account book is lost, destroyed, or stolen.

(2) The bank is not liable if, prior to obtaining the information as per Paragraph 1, it has paid out in good conscience a sum of money to an individual entitled to such payment.

(3) Should a disparity exist between the data in the account and the savings account book, the data in the savings account book are considered accurate if no more than three years has passed from the time that interest was last added. In the opposite case, the data of the savings account are considered accurate.

Article 44. The opening of a savings bank in an enterprise entitled to accept cash deposits from blue-collar and white-collar workers under the responsibility of the enterprise is forbidden. Employers may accept funds for deposit from their blue-collar and white-collar workers only if such funds are immediately deposited in a bank in the name and account of the individual blue-collar or white-collar workers.

Article 45. (1) The banks must participate in the system developed by the Central Bank for guaranteeing deposits for up to a certain sum by establishing a suitable system to this effect and setting aside the necessary funds.

(2) A bank that fails to protect deposits up to a certain amount as per the preceding paragraph may not engage in bank transactions as per Article 1, Paragraph 2, Item 1.

Article 46. The savings accounts of citizens who are not merchants, together with the interest paid on such accounts, amounting to up to 10 minimum wages, are exempt from attachments unless it has been proved on the basis of an executed court ruling that such funds were acquired as a result of a crime or constitute obligations related to support, compensation to be paid for criminal damages, or financial defaults.

Chapter 8

Bank Secrecy

Article 47. (1) Bank personnel, members of bank administrative and control bodies, Central Bank officials, liquidators, or any other individuals working for a bank may not make public, unless authorized to do so, or make use to their personal advantage or to the advantage of their families any facts or circumstances pertaining to the holdings and operations related to accounts and deposits made by bank customers, should such information be obtained in the course of the implementation of their official and professional duties.

(2) A declaration on maintaining bank secrecy must be signed by all bank officials at the time they assume their duties.

(3) The provisions of Paragraph 1 apply also in cases in which said individuals are no longer employed by the bank or their activities have been terminated.

(4) With the exception of the Central Bank and for purposes and under the conditions stipulated in Article 30, Paragraph 2, and Article 31, banks may provide information on operations and cash kept in the accounts of individual customers only with their agreement or on the basis of a court ruling.

(5) At the request of the prosecutor, the court may allow the publication of information as per Paragraph 4 should information on the commission of a crime exist.

Chapter 9

Notification

Article 48. (1) At the end of each month, the banks must submit their monthly reports to the Central Bank.

(2) The banks must draft their semiannual reports in a form stipulated by the Central Bank, such as to provide adequate information on their operations, liquidity, solvency, and overall financial condition.

(3) Accounts and reports must be submitted to the Central Bank at the time stipulated by the bank.

Article 49. Within a period of 15 days, the banks must submit the following information to the Central Bank:

1. Personnel changes in the administrative bodies;
2. Capital decreases or increases;
3. The opening and closing of branches in the country and the temporary halting of bank operations in said branches;

4. The termination of certain types of bank transactions;
5. Large loans made as per Article 28;
6. Unexpected excessive debt or insolvency;
7. Amendments made to the constituent bank regulations;
8. Loans granted as per Article 41.

Article 50. (1) Banks must submit to the Central Bank copies of their statutes, regulations, instructions, and other documents containing rules relative to the extent and procedure of their operations, capital, and internal bank organizations, within seven days of their adoption, or as of the introduction of amendments and supplements.

(2) Banks must submit to the Central Bank certified and updated lists of bank personnel, including personnel in branches and bank offices, authorized to manage and represent the bank, along with a description of their authority and samples of their signatures.

Article 51. Participation in a bank's administrative or control authority is terminated in the following cases:

1. If the individual has been sentenced to imprisonment for a premeditated felony;
2. If the individual was a member of the executive or control authority of a corporation terminated as a result of bankruptcy or if its creditors have not been compensated in full;
3. If the individual is a spouse or a relative up to twice removed, including by blood or marriage, of another member of the administrative or control authority of the bank.

Chapter 10

Annual Balance Sheet

Article 52. (1) All banks must submit an annual balance sheet drawn up by the administrative council (the board of directors).

(2) The annual profit-and-loss statement of a bank must be checked by no fewer than two certified public accountants appointed by the General Assembly; the chosen individuals must be certified public accountants experienced in banking and included in a list approved by the administrative council of the Central Bank.

(3) CPA's with a financial interest in a bank, other than as depositors, or CPA's who are officials or representatives of the bank may not be appointed as bank auditors.

(4) After making the required audit, the investigators must provide their conclusion as to whether the balance sheet and the profit-and-loss statements have been properly drafted and offer an accurate and precise idea of the bank's activities.

(5) If significant violations of this law that affect the further normal functioning of the bank have been established, the auditors must inform the Central Bank without delay.

(6) The results of the final auditing of the annual balance sheets must be reflected in a separate report. The report must be submitted to the administrative bodies and internal control authority of the bank, chosen in accordance with the statutes, as well as to the Central Bank and to the minister of finance.

Chapter 11

Control of Bank Activities

Article 53. (1) The Central Bank supervises the activities of the banks and of the branches of foreign banks in our country. It may require them to present all of the necessary accounting and other documents, as well as information on their activities, and to conduct periodical audits and itemized investigations.

(2) In accordance with the provisions of this law, the Central Bank takes the necessary actions to eliminate violations in banking activities that endanger the safety of the funds or other securities entrusted to the bank or that hinder the proper exercise of bank transactions or could cause substantial damage to the national economy.

(3) Enterprises that may be suspected of engaging in banking activities without permission must submit to the Central Bank, on demand, the necessary information and documents. The Central Bank may conduct on-site investigations.

Article 54. State bodies and officials must assist the bank supervisors in fulfilling their functions.

Article 55. In conducting an audit, the bank control bodies have the following rights:

1. The right to free access to the service premises of individuals engaged in bank transactions as per Article 1, Paragraph 2;
2. The right to demand documents and gather information related to the fulfillment of assignments;
3. The right to appoint experts;
4. The right to launch counterinvestigations in other banking and nonbanking enterprises on matters related to an audit or investigation;
5. The right to request that the court impose attachments or injunctions on the property of individuals who have caused damages.

Article 56. (1) Should it be established that a bank is carrying out activities in violation of this law and the acts related to its application, or that it has allowed other violations concerning requirements of liquidity and stability of bank operations, the Central Bank may:

1. Make it incumbent upon the bank to take specific measures to eliminate violations;

2. Appoint its representatives to attend meetings of the administrative bodies of the bank to discuss measures leading to the elimination of violations;

3. Call a general meeting and schedule meetings of administrative and supervisory bodies of the bank to deal with specified matters;

4. Appoint a suitably qualified and experienced individual to advise the bank on measures to be taken to resolve the difficulty, and determine said individual's remuneration that is to be paid by the bank;

5. Restrict its activities;

6. Remove temporarily from duty individuals authorized to manage and represent the bank, should said individuals deliberately or through negligence violate or continue to violate the provisions of this law and those of the legal acts issued for its application, despite the written warning issued by the Central Bank;

7. Revoke the issued license.

(2) In the cases stipulated in Item 6 of the preceding paragraph, as well as in the cases of Article 8, Paragraph 2, the Central Bank may appoint a supervisor with the authority as stipulated in Article 19, Paragraph 3.

Chapter 12

Liquidation and Insolvency

Article 57. (1) The voluntary liquidation of a bank is based on a decision of the authority that founded the bank, by permission granted by the Central Bank. Such permission may be granted only if the Central Bank has determined that the bank is solvent and has sufficient cash assets to meet its obligations to depositors and other creditors without delay.

(2) Proceedings leading to the state of insolvency may be initiated in cases stipulated by the law as well as by a proposal of the Central Bank.

Chapter 13

Provisions for Administrative Penalties

Article 58. (1) Anyone who violates or allows the commission of a violation as per Article 16, Paragraph 1, Article 17, Paragraph 2, Articles 21, 23, 25, 27, 28, 29, 33, 34, 35, 41, 48, 49, or 50, Article 53, Paragraph 3, or Article 56, Paragraph 1, Item 1 of the present law shall be punished with a fine not exceeding three gross monthly wages, unless the action constitutes a crime.

(2) Anyone engaged professionally in banking without a license issued by the Central Bank or in violation of the conditions under which the license was issued is punishable with a fine not exceeding 100,000 leva, unless the action constitutes a crime. Income acquired as a result of illegal bank activities is confiscated in favor of the state.

Article 59. (1) Documents on noted violations as per the preceding article are drawn up by the bank control bodies; penalties are imposed by the manager of the Central Bank or by an official authorized by him.

(2) The formulation, issuance, appeal, and enforcement of penalties are based on the procedures of the Law on Administrative Violations and Penalties.

Chapter 14

Publication and Appeal of Administrative Acts of the Central Bank

Article 60. (1) Individual administrative acts as per Article 1, Paragraph 4 are issued jointly by the governor or a deputy governor authorized by the governor and another member of the administrative council of the Central Bank; in all other cases, they are issued by the administrative council of the Central Bank.

(2) Administrative acts as per the preceding paragraph may be appealed to the Supreme Court concerning their legitimacy, in accordance with the provisions of the Law on Administrative Procedures.

Additional Provisions

Section 1. For the purpose of this law, a "bank group" or "economically related individuals" are those banks or individuals, one of which, directly or indirectly, owns more than 50 percent of the capital of other banks or persons, or has a participatory share that ensures it a majority in decisionmaking or in the blocking of a decision.

Section 2. For the purposes of this law, a "nonfinancial enterprise" is a person who is not a bank, an investment fund, an insurance, or leasing corporation, or a person as per Article 1, Paragraph 4.

Transitional and Concluding Provisions

Section 3. (1) Within six months of the enactment of the present law, the banks must make their statutes and activities consistent with its provisions; within one year, they must make them consistent with the provisions of Article 28, Paragraphs 2 and 3.

(2) The amount of bank capital as per Article 21, Paragraph 2 must be obtained within three years of the enactment of this law.

(3) Should the provisions of Paragraphs 1 and 2 be violated, the Central Bank will apply the steps indicated in Article 56.

Section 4. (1) The provisions of Article 339, letters "b" and "c" of the Civil Procedure Code applicable to unsalable real estate do not apply in the case of bank claims, should the debtor have deliberately placed himself in a state of insolvency.

(2) The provisions of Article 402 of the Civil Procedure Code do not apply to bank claims should the debtor have deliberately placed himself in a condition of insolvency or if the possessions of the debtor are mortgaged or used as security in favor of the bank.

Section 5. Bank claims resulting from loan delinquencies or prepayment demand for loans granted to juridical persons prior to the enactment of the present law will be

collected from the assets of their own or their guarantors, in accordance with the stipulated sequence, without the need of a writ of execution to be procured by the bank.

Section 6. By 31 December 1993, banks with state participation may change the amount of their fixed capital only by permission of the Central Bank, after a revaluation of their assets.

Section 7. Paragraph 3 of Article 161 of the Commercial Code is amended to read as follows:

“(3) The minimum amount of capital needed for engaging in banking or insurance activities will be established in a separate law.”

Section 8. Regulations will be issued by the administrative council of the Central Bank for the application of Chapters 1, 3, 4, 5, 9, and 11.

Section 9. Individuals who, over the past 15 years, were members of leading bodies of the central, oblast, okrug, city, or township for the BCP [Bulgarian Communist Party], the DKMS [Dimitrov Communist Youth Union], the Fatherland Front, the Union of Active Fighters Against Fascism and Capitalism, the Bulgarian Trade Unions, and the BZNS [Bulgarian National Agrarian Union], or were appointed to leading full-time positions in the BCP Central Committee, as well as officials and paid or unpaid state security collaborators, may not be elected to leading bodies of banks, as per Article 7. This restriction shall be valid for a period of five years.

Law on Long-Term State Property

92CH0852A Budapest MAGYAR KOZLONY
in Hungarian No 81, 28 Jul 92 pp 2,653-2,659

[Law No. 53 of 1992 on the Management and Utilization of State Entrepreneurial Property Remaining Under State Ownership in the Long Term, adopted by the National Assembly at its 22 July 1992 session]

[Text]

Law No. 53 of 1992 on the Management and Utilization of State Entrepreneurial Property To Be Owned by the State in the Long Term

To provide for the management and efficient operation of entrepreneurial property to be owned by the state in the long term [hereinafter: "long-term state property"], and to achieve fundamental economic goals, the National Assembly creates the following law:

**Chapter I
Scope of Authority**

Paragraph 1

(1) Except for the Hungarian National Bank, the State Development Institute and the Financial Institutions Center, business organizations [hereinafter: "organizations"] that operate in whole or in part with long-term state property, as defined in Paragraph 2, and business corporations [hereinafter: "corporations"] which constitute long-term state property in whole or in part, and whose business shares (stock) convey membership (stockholder) rights.

(2) As used in this law, the term "corporations wholly or partly owned by the state" shall mean organizations in which the State Property Management Corporation (AVKRt) (hereinafter: VKRt [Property Management Corporation]) or the responsible minister, as defined in Paragraph 31 Section (3), exercises membership (stockholder) rights.

(3) Relative to corporations defined in Section (2), business shares (stock) providing ownership rights shall be marketable, except as provided for in Paragraph 2 Section (2), provided that the validity of the sale of stock is contingent upon a necessary preliminary decision to be made by the government, pursuant to Paragraph 2 Section (4).

(4) Rules provided in Law No. 16 of 1991 concerning concessions shall apply to the sale of property to be owned by the state in the long term, pursuant to Paragraph 2 Section (2).

(5) The authority of this law shall not extend to:

a) Property subject to the authority of Law No. 54 of 1992 concerning the sale, utilization and protection of property temporarily owned by the state;

b) Treasury property, whose entrepreneurial use is ruled out by separate law; and to

c) State property enumerated in Law No. 33 of 1991 concerning the grant of certain state property to local government, transferred into local government ownership pursuant to proceedings conducted by the property transfer committee.

**Scope of Property To Remain
Long-Term State Property**

Paragraph 2

(1) Except for property referred to in Section (2), the scope of property to remain long-term state property, and property owned by, or to be transferred to, corporations to be owned wholly or partly by the state in the long term, shall be decreed by the government, in due regard to the provisions of Section (3).

(2) Property used to pursue activities defined in Law No. 16 of 1991 concerning concessions, by organizations under majority state control shall be part of the long-term state property.

(3) The government shall include state property or the state's share of property within the scope provided in Section (1):

a) If such action is warranted by economic strategy, or by national economic or some other important interest; or

b) If all or part of a given property delivers nationwide public services and provided that such property can be efficiently operated only in the framework of a uniform research, production or distribution system, and further;

c) If preparing all or part of the property for sale requires a particularly long period of time.

(4) The government shall also state whether long-term state ownership of organizations subject to the authority of this law, or the ratio of business shares (stock) providing for the state's long-term membership (stockholder interest) represents full control, a majority control or minority control. The minimum percentage of long-term state ownership shall also be defined in cases of minority state ownership.

(5) Following the effective date of the decree defined in Section (1), the government shall review at least once every two years the scope of property defined in the decree that is supposed to remain long-term state property, and in corporations subject to the authority of the law, the need to maintain long-term state ownership.

(6) In addition to the VKRt, the minister having jurisdiction primarily on the basis of the activity of a corporation, the State Property Agency, (hereinafter AVU), and the employer and employee interest groups may propose to the government the inclusion of organizations operating state property subject to the authority of this law, or the termination of long-term state ownership subject to the authority of this law.

Chapter II
The State Property Management Corporation
Establishment of the Property Management Corporation

Paragraph 3

(1) The VKRt shall be a single person stock corporation, established retroactively to the date when the Court of Registry entered the corporation in its records and when the founding charter was accepted. Relative to the VKRt, stock representing ownership rights shall be owned exclusively by the state (Civil Code of Laws, Paragraph 172).

(2) The adoption or the amendment of the VKRt's founding charter—to be prepared within 60 days after the adoption of this law—shall be subject to the government's authority in its capacity as the founder. The person authorized to exercise stockholders' rights (Paragraph 6) may also initiate amendments to the founding charter. The signed founding charter shall be countersigned by the minister of justice. The National Assembly may terminate the VKRt by law, upon recommendation made by the government.

(3) Unless otherwise provided in this law, the founding and operation of the VKRt shall take place by appropriately applying the provisions of Law No. VI of 1988 concerning corporations (hereinafter: Gt.), except for the following provisions: Gt. Paragraph 13; Paragraph 251 Section (2); Paragraph 287; Paragraph 326 Sections (1) and (2); and Paragraph 329 Section (1).

Paragraph 4

(1) Following conversion pursuant to Paragraphs 27-29, the founding capital of the VKRt in organizations subject to the authority of this law shall consist of business shares (stock) that remain long-term state property, and of financial contributions required for operations, in amounts determined by the government. Thirty percent of the financial contributions shall be made available to the VKRt by the person authorized to exercise stockholders' rights prior to the submission of a petition to register the firm, while the rest of the financial contributions shall be made available within one year after registering the corporation.

(2) In determining the amount of founding capital, the property of the organizations subject to the authority of this law shall be considered based on the organization's own capital as shown in a financial statement prepared pursuant to Appendix 1 of Law No. 18 of 1991 concerning accounting practices (hereinafter: accounting law), and the amount of such capital in proportion to the state's ownership ratio (business shares, stock). Business shares (stock) regarded as part of the founding capital shall be transferred into the ownership of the VKRt after accomplishing conversion pursuant to Paragraphs 27-29.

(3) When all organizations converting pursuant to Paragraph 30 completed their conversions, the value of existing business shares (stock) in these organizations that remain long-term state property shall also be considered as part of the VKRt's founding capital. In this

regard, a decision shall be reached concerning the increase of the VKRt's basic capital resulting from the added value of the long-term state property shares, within 30 days from the date of the last conversion.

(4) In calculating the basic capital of the VKRt, long term state ownership shares remaining in certain organizations subject to the authority of this law, in which the VKRt's authority is exercised by the minister responsible for performing the function based on Paragraph 31 Section (3), shall be disregarded.

(5) Business shares (stock) in organizations subject to the authority of this law, in excess of the state's long-term ownership share defined in Paragraph 2 Sections (2)-(3), but which are owned by the state, shall be accounted for as the VKRt's assets in excess of its founding capital.

(6) Based on recommendations made by the person exercising the rights of the stockholder, the government, as the founder, shall render decisions concerning increases and decreases in the VKRt's founding capital, except as provided for in Section (3).

The Functions of the VKRt

Paragraph 5

(1) The primary functions of the VKRt shall be performed by applying the rules and limitation provided in this law, and shall be as follows:

a) To convert into corporations the state enterprises presently subject to the authority of Law No. 6 of 1977 concerning state enterprises if, after conversion, the Property Management Agency retains its rights in the long term as a member (stockholder),

b) To exercise the ownership rights, as defined in the Gt., based on its long-term rights as a member (stockholder) in corporations, while enforcing the government's economic policy decisions, and further,

c) To incorporate corporations in which it exercises membership (stockholder) rights in the long term, by using assets in excess of its founding capital.

(2) In corporations wholly owned by the state, or over which the state exercises majority control, the VKRt shall seek the views of the minister having jurisdiction relative to:

a) The persons recommended to be elected to the highest organs as managers, board members, or members of supervisory committees, and in the course of

b) Choosing or changing the definitive scope of activities of a corporation.

(3) The VKRt shall establish a recording and appraisal system required for the legitimate and successful operation of property under its purview.

The Organization of the VKRt**Paragraph 6**

(1) A minister designated by the government (hereinafter: the person who exercises the rights of the stockholder) shall personally exercise the rights of the stockholder on behalf of the state.

(2) In the course of the VKRt's functioning, the authority of the general meeting—except for authority reserved for the founder—shall be exercised by the person who exercises the rights of the stockholder, except that decision-making authority under the jurisdiction of the board of directors shall not be removed.

(3) All shares of stock issued by the VKRt shall be registered stock. The person who exercises the rights of the stockholder shall not sell the stock of the VKRt.

Paragraph 7

(1) The board of directors shall consist of 11 members. The chairman and members of the board (hereinafter, jointly: members of the board) shall be appointed for four-year terms.

(2) Prior to his appointment, the chairman of the board shall appear at a hearing concerning his appointment before the National Assembly committee having jurisdiction. Members of the board shall be appointed and relieved of their duties by the prime minister.

(3) At least three members of the board shall be employees of the VKRt.

Paragraph 8

(1) During, and two years after the expiration of their terms, members of the board shall not be employed by, or maintain other legal relations for the performance of work with any organization subject to the authority of this law, or with the AVU. Members of the board shall not be members of supervisory committees in corporations subject to the authority of this law, and shall hold offices in such corporations only as representatives of the VKRt.

(2) Members of the board or their close relatives (Civil Code of Laws, Paragraph 685 Subsection (b)) shall not acquire business shares or stock in corporations in which the membership (stockholder) rights of the VKRts are to be exercised in the long term, and relatives shall not hold offices, and shall not act as auditors or members of supervisory committees in such corporations.

(3) The appointing authority may, for just cause, exempt members of the board from under the prohibition and restriction defined in Section (1), after the expiration of board membership.

Paragraph 9

(1) The operations of the VKRt shall be overseen by a supervisory committee composed of five to seven members.

(2) The chairman and members of the supervisory committee shall be appointed for five year terms and relieved of their duties by the prime minister, as follows: The chairman of the supervisory committee upon recommendation by the chairman of the ASZ [State Accounting Office], one each member at the recommendation of the minister of finance and the minister of justice, and the rest of the members—from among auditors—as recommended by the chairman of the ASZ.

(3) The rules establish in Paragraph 8 shall also apply to the chairman and members of the supervisory committee.

Paragraph 10

The auditor working alongside the VKRt shall be hired by the person who exercises the stockholders' rights, upon recommendation by the chairman of the ASZ.

Chapter III The Authority of the VKRt as Owner The Sale of Property

Paragraph 11

(1) The VKRt shall not sell or encumber its business shares (stock) held in corporations wholly owned by the state.

(2) If the VKRt exercises majority membership (stockholder) control, the VKRt shall preserve this ratio of control in its exercise of ownership rights (e.g., when increasing the basic capital (founding capital), selling business shares (stock)). Existing business shares (stock) held by the VKRt in corporations in which the state's share of ownership is in the minority shall not be encumbered, and shall sold only if such shares exceed the minimum level established by the government (Paragraph 2 Section (4)).

(3) When selling business shares (stock) within the limitations provided in Sections (1)-(2), the VKRt shall have the same rights and obligations as the AVU has pursuant to Law No. 54 of 1992 concerning the sale, utilization and protection of property temporarily owned by the state.

(4) Corporations wholly owned by the state subject to the authority of this law may encumber more than 50 percent of the property they own only by special permission granted by the person who exercises the rights of the stockholder.

Establishment of Organizations**Paragraph 12**

(1) The VKRt may establish corporations, provided that it does not provide for such corporations to be established business shares and stock that are part of the VKRt's basic capital as nonmonetary deposits (contributions), except in instances consistent with the provisions of Section (4).

(2) The government shall determine the ratio of the state's share in corporations to be established by the VKRt.

(3) The VKRt shall not sign the corporate agreement (founding charter, bylaws) and shall not accept the same before the government renders a determination concerning the ratio of state control in the corporation to be established.

(4) The VKRt may establish a corporation wholly owned by the VKRt for the direction of corporations which have property and which can be operated in a uniform research, production or distribution system, and which, according to the provisions of Gt. Chapter VII Title 7, have a significant share in another corporation or exercise majority control, not in excess of the ratio specified in Gt. Paragraph 328.

Property Management

Paragraph 13

(1) The VKRt may assign in exchange for compensation the membership rights which it is entitled to exercise and which flow from its basic capital pursuant to Paragraph 4, and which are based on marketable business shares and stock, to corporations established pursuant to Paragraph 12, or, if warranted, to property managers not owned by the state (hereinafter: management assignment). Such corporations or property managers shall not show the assets entrusted to them in their financial statements.

(2) The VKRt and the minister authorized to consummate a concession agreement shall agree on inviting competitive bids for entering into a given concession agreement, and on the criteria which serve as a basis to judge the bids. Based on such agreement, the property under the VKRt shall be operated and utilized pursuant to Paragraph 2 Subsection (b) of Law No. 16 of 1991 concerning concessions.

(3) In the event that the property management agreement involves the utilization of real property protected as a historic landmark or as a natural environment, related separate legal provisions shall be observed when consummating the agreement, and the buyer shall be informed of these provisions.

Paragraph 14

(1) The property manager shall be chosen on the basis of competitive bidding. Competitive bidding may be based on either open or closed tender invitations.

(2) Open tender invitations shall be announced in two national newspapers, at least 30 days prior to the date when bids may first be submitted.

(3) A tender shall be regarded as closed if the VKRt issues invitations directly to interested persons to make offers, by simultaneously establishing an appropriate deadline.

(4) Requirements may be included in tender invitations for tender bids be treated secretly, and that bidders submit their names in sealed envelopes.

Paragraph 15

Any legal entity, unincorporated organization or individual entrepreneur may participate in open tender bidding.

Paragraph 16

(1) The tender invitation shall include the following:

- a) The purpose of the tender;
- b) The designation and value of the property share to be assigned for management;
- c) The conditions of management assignment established with the involvement of the authorities having jurisdiction;
- d) The place and date where bids must be submitted; and
- e) The criteria by which bids are to be judged.

Paragraph 17

(1) In judging the bids consideration shall be given to the bidder's obligation with respect to providing jobs for employees, the employees' income and social welfare benefits, as well to the bidder's credit rating.

(2) In case of bids involving identical amounts:

- a) Persons who have previously acted as property managers in case their property management agreement had been discontinued, provided that the agreement had not been terminated due to the property manager's fault, or
- b) Existing or future corporations or cooperatives engaged or to be engaged in property management in which at least 25 percent of the workers participate in the MRP [Employee Ownership Share Program] shall be preferred.

(3) The VKRt may enter into an agreement with the winning bidder, the person who submitted the most favorable bid.

(4) The VKRt shall announce the outcome of the tender invitation supported by reasoned argument, and the tender award itself in the same two national newspapers in which it had previously announced the tender invitation. In case of a closed tender the results of the tender shall be conveyed directly to the bidder.

Paragraph 18

(1) Parties to a property management agreement shall be free to determine the conditions of such agreements within limitations established by law, and in due regard to the provisions of the tender invitation, the bid, and the provisions of Section (2).

(2) Performance on contracts governing the management of state property shall be ascertained by establishing secondary obligations, (e.g., liens, security deposits, guarantees of payment). These obligations may be imposed jointly and severally.

Paragraph 19

(1) The property manager shall perform his obligations pursuant to the general rules of civil law, and shall be liable for the payment of indemnification if such rules are violated for reasons attributable to the property manager.

(2) The VKRt shall continuously monitor the property manager's activities. In doing so, the VKRt may request detailed, written reports and accounting in predetermined time intervals. The VKRt shall also continually examine the credit worthiness of the property manager.

(3) In case of a grave breach of contract on part of the property manager, or if the property manager impedes the monitoring and review function specified in Section (2), the VKRt may terminate the agreement with an immediate effect.

Paragraph 20

(1) The property manager shall account for fees paid by the VKRt as sales revenues, and valid expenses incurred in conjunction with the management of property as expenditures.

(2) Property management agreements may stipulate that the property manager be entitled to his fee only if an outcome stipulated in the agreement is accomplished; such conditions, however, shall not affect the obligation to reimburse the contractor for valid expenses incurred in conjunction with the management of the property.

(3) The VKRt shall establish detailed rules and regulations for tender processes reflecting the provisions of this law.

Special Forms for Operating State Property

Paragraph 21

(1) If national public service functions (e.g., water supply, energy supply, transportation) are performed by corporations wholly owned by the state, or over which the state exercises majority control, such corporations may abandon their activities only if the performance of the public service function is secured otherwise. The board of directors of the VKRt shall render a decision regarding the termination of continued activities. The opinion of the minister having jurisdiction based on the type of activity involved shall be sought to support the VKRt's decision.

(2) At the recommendation of the minister having jurisdiction based on the type of activity involved, the government shall establish a corporation wholly owned by the state or in which the state owns a majority of the shares, if the public service provision is not ensured on a nationwide basis otherwise (through an organ funded by

the state budget or through a concession agreement). In such cases the government shall provide the capital (basic capital) required for the functioning of such corporation.

(3) The founders rights in corporations established pursuant to Sections (1)-(2) shall be exercised by the VKRt or the minister having jurisdiction based on the function to be performed, based on a decision made by the government. If the government authorizes the minister having jurisdiction based on the function to be performed, the authority granted by this law to the VKRt shall be exercised by the minister.

Chapter IV The Management of the VKRt

Paragraph 22

(1) The revenues of the VKRt shall consist of:

a) Returns (dividends) after business shares (stock) it owns;

b) Revenues derived from the sale of property it is authorized to sell; and

c) Other revenues not included under Subsections (a) and (b).

(2) In accounting for revenues specified under Section (1) Subsections a)-c) the VKRt shall observe the requirements established by the accounting law, except that the VKRt shall be obligated to pay corporate taxes only after revenues collected under Subsection c).

(3) The VKRt shall establish a segregated profit reserve fund from its taxed profits. Ten percent of the VKRt's annual taxed profits shall be deposited in the segregated profit reserve fund, until the amounts deposited correspond with the value of a percentage share of the VKRt's basic capital, as such percentage had been established by the government at the time of the founding. The segregated profit reserve shall be used in particular for the reorganization of corporations under the purview of the VKRt's, to cover the losses of the VKRt (Gt. Paragraph 326 Section (3)), and to compensate for damage claims.

(4) By using revenues specified in Section (1) Subsections a)-b), the VKRt shall pay dividends to the state budget to an extent to be specified in annual budget laws, after accumulating the segregated profit reserves specified in Section (3).

Paragraph 23

(1) The ASZ shall audit and control the activities of the VKRt.

(2) If the VKRt becomes insolvent, or if the rate of its profits (dividends) falls substantially below the profit or dividend levels characteristic in the national economy, the ASZ shall find the reasons for such shortfall and shall summarize these reasons in a separate report.

Paragraph 24

(1) Except for policy considerations to be dealt with in legal provisions or in the founding charter of the VKRt, the National Assembly shall determine the chief considerations applicable to the utilization of the state's entrepreneurial property in Property Policy Guidelines (hereinafter: Guidelines) for the following year, such as the dividend policies of the VKRt and sales conditions applicable to the VKRt.

(2) Proposals to be included in the Guidelines shall be submitted by the government to the National Assembly simultaneously with its submission of the legislative proposal for the following year's state budget.

(3) The National Assembly shall adopt a resolution concerning the Guidelines.

Paragraph 25

(1) The government shall report to the National Assembly annually—when submitting its legislative proposal concerning the previous year's state budget performance—concerning the activities of the VKRt, the ways in which organizations subject to the authority of this law utilize their assets, their profits, as well as the implementation of the Guidelines.

(2) The government shall enclose to its report the annual report of the VKRt prepared pursuant to the accounting law, as well as the report of the chairman of the ASZ concerning the activities of the VKRt.

(3) The VKRt shall inform the ASZ semiannually of changes in, and the utilization of the state's entrepreneurial property.

**Chapter V
Conversion of State Enterprises
Into Corporations**

Paragraph 26

(1) The VKRt shall render decisions concerning the conversion of state enterprises into corporations under its jurisdiction.

(2) Conversion based on this law shall not incur separate tax liability or the obligation to pay dues, except for fees payable for the proceedings.

(3) The newly-established corporation shall be the general legal successor to the converted enterprise.

**Conversion of State Enterprises Into Corporations
Wholly Owned by the State**

Paragraph 27

(1) State enterprises in which the VKRt's membership (stockholder) right prevails fully and in the long term after the conversion into corporations, may convert into limited liability corporations or stock corporations, provided that beginning on the effective date of a government decree promulgated pursuant to Paragraph 31 Section (2), and until their conversion, such enterprises

continue to operate as enterprises under state administrative supervision, and provided that the founder's authority is exercised by the VKRt.

(2) The presidents of the enterprises shall take the necessary steps for the conversion into corporations of the respective enterprises defined in Section (1). The assets of the converting enterprises shall be regarded as the assets of the corporation in the amount shown as the converting enterprise's own capital in a financial statement prepared pursuant to Appendix 1 of the accounting law. Unless otherwise provided by law, assets exclusively owned by the state pursuant to the Civil Code of Laws shall not be included in determining the assets of the corporation that becomes the legal successor to the enterprise. The VKRt shall render decisions concerning use rights to be assigned to the corporation regarding such assets.

(3) The founding charter shall be prepared within 60 days from the effective date of the government decree specified in Paragraph 31 Section (2). The founding charter shall be signed by the VKRt.

Paragraph 28

(1) The grantee of permits issued by the authorities prior to conversion shall be the corporation being established; regarding pending permits, the new corporation shall report without delay to the permitting authorities that a conversion had occurred. The new corporation shall be shown on the permit as the grantee of the permit.

(2) Conversion shall not void existing claims against an enterprise.

(3) By debiting its capital reserve fund, the enterprise may repurchase at face value the property certificates it had issued free of charge or had sold at a preferential rate prior to conversion, and at the request of certificate holders, shall repurchase other property certificates for no less than the face value of the certificates.

Paragraph 29

Local governments having jurisdiction based on the place where a given piece of land is located, shall become entitled to their share of benefits after land located within the corporate limits of a local jurisdiction—pursuant to Law No. 54 of 1992 concerning the sale, utilization and protection of property temporarily owned by the state—when corporations wholly owned by the state cease based on a government decision.

**Conversion of State Enterprises Into Corporations
Partly Owned by the State**

Paragraph 30

(1) State enterprises in which the VKRt's membership (stockholder) rights prevail only in part but in the long term after the conversion of an enterprise into a corporation, shall submit their conversion plans to the VKRt not later than six months after the effective date of this law. The provisions of Law No. 54 of 1992—except for the provisions of Chapter IV Title 3—concerning the

sale, utilization, and protection of property temporarily owned by the state shall be appropriately applied for the protection of the property of these enterprises, with the sole difference that the authority to be exercised by the AVU shall be exercised by the VKRt.

(2) If an enterprise fails to submit its conversion plan to the VKRt by the deadline established in Section (1), or, if it becomes apparent that based on the conversion plan submitted the conversion of the enterprise into a corporation cannot be accomplished, the VKRt shall convert the enterprise into a corporation based on the provisions of Paragraph 27. An enterprise may also request the VKRt to proceed on the basis of Paragraph 27 in the course of conversion.

(3) In cases mentioned under Section (2), the provisions of Paragraph 63 of Law No. 54 of 1992 concerning the sale, utilization, and protection of property temporarily owned by the state shall be applied to appraise the property.

Chapter VI Closing Provisions

Paragraph 31

(1) This law shall take effect pursuant to separate law.

(2) Based on Paragraphs 1-2 of this law, the government shall decree:

- a) The organizations subject to the authority of the law;
- b) The ratio of business shares (stock) to be transferred into the ownership of the VKRt, as compared to the registered capital of organizations in these organizations; and
- c) The minimum extent of state ownership in cases involving long-term minority ownership of property.

(3) Further, the government shall designate in this decree the organizations that operate property subject to the authority of this law, whose activities involve nationwide public service delivery activities, as well as designate the organizations in which the authority of the state as the owner, as provided for in this law, is exercised not by the VKRt, but by the minister having jurisdiction based on the field of activity pursued, by appropriately applying the rules applicable to the VKRt—authority involving conversion into a corporation by the deadline specified by the government, property management, sales, the founding of corporations.

(4) The government shall promulgate a separate decree to designate enterprises providing state public services, which shall be replaced by, or part of whose property shall be used to establish an organization funded by the budget or a foundation—in the course of converting these enterprises into corporations pursuant to conditions established by the government—within six months after the effective date of this law.

Paragraph 32

Whenever this law requires consultation with some organization or person regarding such persons' or organization's concurrence or views, and if such person or organization fails to provide his view within 30 days from date of receipt of notice—unless a different deadline is established by this law—such failure shall be regarded as the concurrence of such person or organization, or as the unwillingness of such person or organization to express his or its view.

—Arpad Goncz, President of the Republic
—Gyorgy Szabad, President of the National Assembly

Executive Order on Agriculture, Debt Relief Fund
92EP0550A Warsaw RZECZPOSPOLITA (ECONOMY AND LAW Supplement) in Polish 30 Jun 92 p X

[On Restructuring and Debt Relief for Agriculture, dated 11 June 1992]

[Text] Below we reprint the Executive Order of 11 June of the Council of Ministers on the Operating Principles and Funding Sources of the Agricultural Restructuring and Debt Relief Fund. It is binding as of 25 June, that is, as of the date of its publication in *DZIENNIK URZEDOWY*, No. 49. Its text follows:

Pursuant to Article 31, Paragraph 1, Point 3), of the Law of 31 January 1989 on the National Bank of Poland (DZ.U., No. 4, Item 22, and No. 74, Item 439, 1989; and No. 20, Item 78, and No. 49, Item 221), the following is hereby ordered:

Paragraph 1

The Agricultural Restructuring and Debt Relief Fund referred to in Article 31, Paragraph 1, Point 3), of the Law of 31 January 1989 on the National Bank of Poland (DZ.U., No. 4, Item 22, and No. 74, Item 439, 1989; and No. 20, Item 78, and No. 49, Item 221), operates pursuant to the provisions of the Budget Law of 5 January 1991 (DZ.U., No. 4, Item 48, No. 34, Item 150, No. 94, Item 421, No. 107, Item 464, and No. 110, Item 475, 1991; and No. 21, Item 85, and No. 33, Item 143, 1992) and the provisions of the present Executive Order.

Paragraph 2

The income of the Agricultural Restructuring and Debt Relief Fund, hereinafter referred to as "the Fund," is:

(1) Monies derived from the interest earned on the mandatory reserves deposited by the banks in the National Bank of Poland pursuant to Article 31, Paragraph 1, Point (3), of the Law of 31 January 1989 on the National Bank of Poland referred to in Paragraph 1.

(2) Monies allocated for the restructuring and modernization of agriculture, agricultural and food processing, and the technical and production infrastructure of the countryside, as specified in the budget law for the given year.

(3) Monies derived from the repayment of the principal plus interest lent by the Fund.

(4) Monies derived from the reimbursement of the budget assistance provided in previous years for the purchase of mineral fertilizers and pesticides and for the restructuring and modernization of agriculture and its environment.

(5) Interest earned on the Fund's investments.

(6) Monies gained by the Fund as part of foreign aid for agriculture for purposes consonant with the Fund's mission.

(7) Donations by individuals and legal entities.

(8) Other income.

Paragraph 3

3.1. The Fund's monies are allocated for:

(1) Modernization of farms.

(2) Development of rural production-technical infrastructure.

(3) Development, restructuring, and modernization of the processing of agricultural and food products as well as of agricultural services.

(4) Assistance in debt repayment, consisting in extension of the period of the repayment of principal and interest on the installment plan.

(5) Other purposes relating to the restructuring and modernization of agriculture and its environment, as defined by the minister of agriculture and food industry.

3.2. The Fund's monies earmarked for the purposes referred to in Paragraph 1 may, under agreements concluded by the minister of agriculture and food industry with the banks, be used to:

(1) Grant, through the mediation of the banks, credits, loans, and assistance in the payment of interest on loans granted by the banks.

(2) Provide additional subsidy funding for particularly important projects defined in the Fund's annual financial plans.

(3) Pay for the consequences of extensions of the repayment of principal and interest on installment loans and of the abandonment of executive proceedings against delinquent borrowers.

(4) Purchase term certificates of deposit in banks.

Paragraph 4

4.1. The allocating agency of the Fund is the minister of agriculture and food industry.

4.2. The Fund's monies are kept in a separate account in the National Bank of Poland.

4.3. The Fund's finances are managed on the basis of income and outgo plans that are part of the Budget Law.

4.4. Drafts of the plans referred to in Paragraph 3 are assessed by the Fund Council.

Paragraph 5

5.1. The Fund Council is appointed by the minister of agriculture and food industry.

5.2. The Fund Council consists of one representative each from the minister of agriculture and food industry, the minister of finance, the chairperson of the National Bank of Poland, and farmers' trade unions.

5.3. The work of the Fund Council is directed by its chairperson, appointed by the Council at its first session.

5.4. The guidelines and procedure for the operations of the Fund Council are defined in the manual of rules adopted by the Council.

Paragraph 6

This Executive Order takes effect on the day of its publication.

Law on Relations Between Legislature and Executive

AU2808141992 Warsaw RZECZPOSPOLITA (ECONOMY AND LAW supplement) in Polish 7 Aug 92 p VII

["Constitutional Law of 1 August 1992 on Mutual Relations Between the Legislature and Executive of the Republic of Poland, and on Local Government"—commonly known as the "small constitution"]

[Text] In order to improve the work of the supreme authorities of the state until such time as the new constitution of the Republic of Poland has been passed, the following is decreed.

Chapter 1. General Principles

Article 1. The following are state authorities in the legislative sphere: The Sejm and Senate of the Republic of Poland. The following are state authorities in the executive sphere: The president of the Republic of Poland and the Council of Ministers. The following are state authorities in the judicial sphere; the impartial courts.

Article 2.1. Deputies and senators, persons belonging to the Council of Ministers, and other persons holding public offices in the State described in the constitutional law may not pursue activity that conflicts with the performance of their mandate, office, or function within the scope and under the regulations defined in the law.

2.2. At the beginning and end of their terms of office, or prior to assuming office and after leaving it, the persons listed in point 1 are to file declarations about the size of their assets.

Chapter 2. The Sejm and Senate

Article 3. The Sejm consists of 460 deputies chosen in universal, equal, direct, and proportional elections, by secret ballot.

Article 4.1. The Sejm's term of office is four years from the date of the elections.

4.2. The president directs that elections be held on a Sunday during the month preceding the end of the Sejm's term of office.

4.3. The Sejm may be dissolved by means of its own resolution, supported by at least two-thirds of the deputies.

4.4. The president may dissolve the Sejm in circumstances defined in this law, after obtaining the opinions of the marshals of the Sejm and Senate.

4.5. The term of office of the Sejm and Senate ends on the day on which a Sejm resolution or presidential decree on the dissolution of the Sejm is announced.

4.6. If the Sejm is dissolved by the president or by a Sejm resolution, the president directs that elections be held on a Sunday no earlier than three months and no later than four months after the termination of the Sejm's term of office.

Article 5. The Supreme Court decides on the validity of the elections or the validity of the mandate of any deputy against whom a protest has been lodged.

Article 6. A deputy is a representative of the entire people. He is not bound by any instructions from voters, and he may not be recalled.

Article 7.1. A deputy may not be brought to justice for actions arising from the performance of his mandate either during the existence of his mandate, or after the termination thereof, unless he violates the personal assets of other persons.

7.2. A deputy may not be brought to criminal justice, nor may he be arrested, without the approval of the Sejm. Such approval is expressed by means of a two-thirds majority of votes, with a quorum of at least half of the deputies.

Article 8. The mandate of a deputy may not be combined with the mandate of a senator, nor with the post of judge in the Constitutional Tribunal, judge in the State Tribunal, judge in the Supreme Court, president of the National Bank of Poland, civic ombudsman, chairman of the Supreme Chamber of Control, ambassador, or voivode.

Article 9.1 The Sejm conducts its deliberations at sessions.

9.2. The president convenes the first session of the newly elected Sejm within one month of the day of the elections.

Article 10.1. The Sejm appoints out of its members a marshal, deputy marshals, and committees.

10.2. The marshal and deputy marshals together form the Sejm Presidium. The Presidium convenes Sejm sessions and oversees their activity.

10.3. The terms of office of the Sejm marshal and deputy marshals expire the moment the new Sejm has convened.

Article 11. In order to investigate a given issue, the Sejm may appoint an investigation commission, which has the right to summon and interview persons within the terms of the code of criminal proceedings. The powers of an investigation commission are defined in this law.

Article 12.1. The Sejm's deliberations are open. The Sejm may make its deliberations secret by an absolute majority of votes, should the welfare of the state so require.

12.2. At Sejm sessions, the chairman of the Council of Ministers, members of the Council of Ministers, and ministers of state may speak out of turn whenever they wish.

Article 13. The Sejm passes laws by a majority of votes, with at least half of all deputies present, unless the constitutional law states otherwise. The Sejm passes

other resolutions in the same way, unless the provisions of laws and Sejm resolutions state otherwise.

Article 14. The organization and procedures of Sejm work are set out in rules adopted by the Sejm.

Article 15.1. Legislative initiative belongs to deputies, the Senate, the president, and the Council of Ministers.

15.2. When presenting a draft law, the Council of Ministers shall discuss its financial affects and supply the drafts of basic rules on how to implement them.

15.3. The initiators of draft legislation, deputies, and the Council of Ministers have the right to make amendments to such legislation while it is being discussed in the Sejm. On his own initiative, and also at the request of the Council of Ministers, the Sejm marshal may refuse to put to the vote any amendments that were not previously placed before a committee.

15.4. The initiators of draft legislation may withdraw a piece of draft legislation during the Sejm legislative process before the first reading has taken place. Should such a withdrawal take place, the Sejm decides on further procedures.

Article 16.1. In justified cases, the Council of Ministers may give urgent status to a piece of legislation introduced by it.

16.2. The Sejm regulations define the different procedures to be followed when there is an urgent piece of legislation.

16.3. The Sejm marshal may refuse to put to the vote any amendment to an urgent piece of legislation that was not previously placed before a committee.

16.4. In proceedings concerning urgent legislation, the deadlines discussed in Article 17, Point 2 are curtailed by seven days.

Article 17.1. The Sejm marshal conveys to the Senate any law that has been passed by the Sejm.

17.2. Within the space of one month, the Senate may accept a law, make amendments to it, or reject it. If the Senate fails to adopt any resolution on this law within 30 days, it is considered passed.

17.3. In the case of amendments made by the Senate requiring state budget expenditure, the source of the necessary funds must be indicated.

17.4. A Senate resolution rejecting a law or an amendment proposed in a Senate resolution is considered valid unless the Sejm rejects it by an absolute majority of votes.

Article 18.1. The Sejm marshal places a law passed by the Sejm and Senate before the president to be signed.

18.2. The president signs the law within 30 days of its being placed before him, and decrees that it be published in the DZIENNIK USTAW.

18.3. The president may refuse to sign a law and, with a suitable explanation, refer it back to the Sejm for reconsideration. Once the Sejm has once again passed the law with a two-thirds majority of votes the president signs the law within seven days and decrees that it be published in the DZIENNIK USTAW, unless he applies to the Constitutional Tribunal in accordance with Point 4.

18.4. Before signing a law, the president may request the Constitutional Tribunal to see that the law complies with the Constitution. In this case, the deadline by which the president would normally sign the law is frozen. The president may not refuse to sign a law which the Constitutional tribunal has deemed to be in compliance with the Constitution.

Article 19.1. A referendum may be held on matters of particular importance to the state.

19.2. A referendum may be decreed by:

a) The Sejm by means of a resolution passed with an absolute majority of votes, or by:

b) The president, with the approval of the Senate, expressed in an absolute majority of votes with at least half of all senators present.

19.3. The result of the referendum is binding if more than half of eligible voters took part in it.

19.4. The rules and procedure for holding a referendum are set out in this law.

Article 20. The state's incomes and expenditures for the calendar year are set out in the budget. In special circumstances, the state's incomes and expenditures for a period of less than one year may be set out in a provisional budget.

Article 21.1. The Council of Ministers is obliged to place draft budgets before the Sejm early enough for the Sejm to pass them before the start of the budget year and, in certain cases, before the end of the first quarter of the year. This deadline and the conditions attached to the draft budget are set out in this law.

21.2. The Senate may pass a resolution to accept or amend a draft budget that has been approved by the Sejm within 20 days of receiving it.

21.3. Should a budget or provisional budget not be approved, the Council of Ministers shall pursue financial policy on the basis of the draft that has been placed before it.

21.4. The president may dissolve the Sejm if it fails to pass the budget within three months.

Article 22.1. The Council of Ministers is obliged to submit to the Sejm reports on the implementation of the budget and on the implementation of other state financial plans passed by the Sejm within six months of the end of the budget year.

22.2. The Sejm shall assess the implementation of the budget and other state financial plans within two months of receiving reports from the Council of Ministers, and

shall pass a vote of approval after hearing the opinion of the Supreme Chamber of Control, presented by its chairman.

22.3. Should the Council of Ministers not receive the Sejm's approval, it shall resign.

Article 23.1. By means of a law passed with an absolute majority of votes, the Sejm may authorize the Council of Ministers, on application by the Council, to issue decrees that have the force of law.

23.2. Such decrees shall define the subject matter they apply to and the extent of the powers described therein.

23.3. During the validity of a decree described in Point 2, the Council of Ministers enjoys sole legislative initiative within the framework of the powers that belong to the government.

23.4. A Sejm law may not authorize the Council of Ministers to pass a decree concerning the following subjects: changes to the Constitution; presidential elections; elections to the Sejm, Senate, and local government bodies; the personal liberties of citizens; the political rights of citizens; the rights and duties stemming from employment contracts; and the ratification of the international agreements discussed in Article 34, Point 2 of this law.

23.5. The president signs a decree that has been placed before him by the Council of Ministers, and orders it to be published in the *DZIENNIK USTAW*.

23.6. Before signing a decree, the president may ask the Constitutional Tribunal to check whether it complies with the Constitution.

23.7. The president may refuse to sign a decree and return it to the Council of Ministers within 14 days, in which case the Council of Ministers may submit the decree to the Sejm as a draft law.

Article 24.1. The Sejm may only adopt a resolution on martial law if there is an armed attack on the Republic of Poland or if an international agreement requires joint defense against aggression. Should the Sejm not be in session, the president reaches a decision on martial law.

24.2. The conditions, legal outcome, and procedures for introducing martial law are set out in this law.

Article 25.1. A deputy may address a motion or question to the chairman of the Council of Ministers and individual members of this Council.

25.2. Motions are put in writing, and a reply to them should be issued within 21 days. Should the reply not satisfy the originator of the motion, he may ask the Sejm marshal for an additional reply, and also request that a reply be given during a Sejm session.

25.3. Questions are put orally at every Sejm session, and require a direct reply.

25.4. Detailed rules concerning motions and questions and replies to them are contained in the Sejm regulations.

Article 26. The Senate consists of 100 senators, elected in the voivodships for a term of office corresponding to that of the Sejm. Elections to the Senate take place on the same day as elections to the Sejm.

Article 27. Articles 5 to 10 and 12 to 14 are applicable to the Senate and senators as appropriate.

Article 28. In circumstances laid down in the constitutional law, the Sejm and Senate meet in joint session under the chairmanship of the Sejm marshal, and thus form the National Assembly.

Chapter 3.

The President of the Republic of Poland

Article 29.1. The president of the Republic of Poland is the highest representative of the Polish State in domestic and international relations.

29.2. The president sees that the Constitution of the Republic of Poland is adhered to. He safeguards the state's sovereignty and security and the inviolability and integrity of its borders. He monitors adherence to international agreements and treaties.

Article 30.1. The president is chosen by the people.

30.2. The president is chosen in a universal, equal, direct election, by secret ballot, by an absolute majority of the valid votes cast.

30.3. Should no presidential candidate achieve an absolute majority, a second round of voting is held 14 days after the first. Those candidates who achieved the largest number of votes in succession in the first round, and who have not withdrawn their candidacies, take part in this second round of voting. The candidate who achieves the largest number of votes is considered the present-elect.

30.4. The president is elected for five years, and may be re-elected only once.

30.5. Any Polish citizen above the age of 35 and holding the full right to vote in a Sejm election may become president.

30.6. The president's term of office runs from the day on which he enters office.

30.7. Presidential elections are decreed by the Sejm marshal no earlier than four months and no later than three months before the end of the incumbent president's term of office. Should the post of president be vacated, such an election must be decreed no later than 14 days after its vacation. The presidential election shall be held within two months of the day on which the election was announced. Elections are held on a work-free day.

Article 31.1. The president takes up his post after swearing an oath before the National Assembly with the following text: "Assuming the office of president of the Republic of Poland by the will of the people, I solemnly swear that I will remain faithful to the provisions of the Constitution, that I will guard the honor of the nation and the independence and security of the state, and that

the welfare of the fatherland and the well-being of its citizens will be my highest consideration." The words "so help me God" may be added to the end of the oath.

31.2. A president elected prior to the termination of his predecessor's term of office assumes his post the day after the termination of his predecessor's term of office.

Article 32. The president may not hold any other post, nor may he belong to the Sejm or Senate.

Article 33.1 The president exercises general supervision over foreign relationships.

33.2. The president appoints and dismisses legal representatives of the Republic of Poland in other countries, and receives the credentials and farewells of foreign diplomats accredited to him.

33.3. Contacts with other countries, as well as with Polish diplomatic representatives abroad, take place via the appropriate foreign minister.

Article 34.1. The president ratifies and terminates international agreements and informs the Sejm and Senate of this.

34.2. The ratification and termination of international agreements concerning the country's borders and defense alliances, as well as any agreements that involve the spending of state funds or necessitate changes to legislation, have to be approved in advance by means of a law.

Article 35. The president exercises general supervision concerning the state's external and internal security. The president's advisory body in this regard is the National Security Council.

Article 36.1. The president is the head of the Armed Forces of the Republic of Poland.

36.2. The president, in concert with the minister of national defense, appoints and dismisses the chief of the Polish Army General Staff and, on the recommendation of the minister of national defense, appoints and dismisses deputy chiefs of the General Staff, commanders of the individual armed services, and commanders of the military districts.

36.3. The president appoints a commander in chief of the Armed Forces in time of war.

Article 37.1. In the event of the state being exposed to an external threat, the president may introduce martial law applicable to part of the territory or the entire territory of the Republic of Poland as well as announce a partial or general mobilization.

37.2. The organization of the state authorities for the duration of martial law and the other legal consequences of the introduction of martial law are to be regulated by law.

Article 38.1. The president may for a definite period of time, not exceeding three months, introduce a state of emergency applicable to part of the territory or the entire territory of the state if the internal security of the state is

threatened or in the event of a natural catastrophe. The duration of the state of emergency may only be extended once for a period not exceeding three months with the assent of the Sejm.

38.2. The Sejm may not be dissolved during a state of emergency and its term of office may not end within three months of the state of emergency being lifted.

38.3. During a state of emergency neither constitutional laws or electoral codes may be altered.

38.4. The detailed conditions and legal consequences of the introduction of a state of emergency as well as the manner in which it is to be introduced are to be regulated by law.

Article 39.1. The chairman of the Council of Ministers is to report to the president on basic issues that are the subject of the work of the Council of Ministers.

39.2. The president may convene a meeting of the Council of Ministers and chair it in connection with matters of particular importance for the state.

Article 40. The president may address the Sejm or the Senate. The address is not made the subject of a debate.

Article 41. The president proposes to the Sejm the appointment or dismissal of the chairman of the National Bank of Poland.

Article 42. The president bestows and withdraws Polish citizenship.

Article 43. The president appoints judges on the recommendation of the National Judiciary Council.

Article 44. The president exercises the right of clemency.

Article 45. The president bestows orders and decorations.

Article 46.1. In order to implement laws and on the basis of the powers contained in them, the president issues decrees and directives.

46.2. The president issues directives pertaining to the exercise of his legal powers.

Article 47. To acquire the force of law, legal acts issued by the president are to be countersigned by the chairman of the Council of Ministers or the appropriate minister, who submit the issue to the president.

Article 48. The provision of Article 47 does not apply to:

- 1) Convening the first session of a newly elected Sejm and Senate;
- 2) The dissolution of the Sejm;
- 3) Calling elections to the Sejm and the Senate;
- 4) Legislative initiatives;
- 5) The signing or refusal to sign laws or decrees having the force of law;

6) Applications to the Constitutional Tribunal to examine the compatibility with the Constitution of laws or decrees having the force of law;

7) The designation of the Council of Ministers and the appointment of the full membership of the Council of Ministers;

8) Acceptance of the resignation of the Council of Ministers and entrusting the council with the exercise of its duties;

9) Convening meetings of the Council of Ministers;

10) The initial application for constitutional accountability proceedings before the State Tribunal;

11) Applications for the conduct of an inspection by the Supreme Chamber of Control;

12) The appointment and dismissal of the chairman of the Supreme Administrative Court;

13) The powers of the president contained in Article 19, Paragraph 2, Point 2, Articles 40-45, and Article 49.

Article 49.1. The president may appoint ministers of state to represent him vis-a-vis other agencies on matters connected with the exercise of the powers contained in Article 48, Points 1-5.

49.2. The executive agency of the president is the Presidential Chancellery. The Chancellery derives its authority from the president, who appoints and dismisses its head.

Article 50.1. The office of president falls vacant before the end of the term of office in the event of:

1) Death;

2) Abdication of office;

3) Permanent inability to hold office for health reasons as determined by the National Assembly in the form of a resolution passed by at least a two-thirds majority in the presence of at least half the total number of members of the National Assembly.

4) Divestiture of office in consequence of a State Tribunal ruling.

50.2. In the event that the office of president is vacant and until office is assumed by a new president, as well as in the event that the president is temporarily unable to discharge his office, the Sejm marshal acts in his place, and in the event that he is unable to perform these functions, the Senate marshal.

50.3. A person acting in place of the president may not dissolve the Sejm.

Article 51.1. For breaches of the Constitution or laws as well for the commission of crimes, the president may only be made accountable before the State Tribunal.

51.2. The president may be impeached by means of a National Assembly resolution that has been passed by a majority comprising at least two-thirds of the total number of members of the National Assembly and

proposed by at least one-fourth of the total number of members of the National Assembly.

51.3. On impeachment, the exercise of office by the president is immediately suspended.

Chapter 4 The Council of Ministers of the Republic of Poland (the Government)

Article 52.1. The Council of Ministers conducts the domestic and foreign policy of the Republic of Poland.

52.2 The Council of Ministers directs the entire state administrative apparatus.

Article 53.1. The Council of Ministers makes decisions on all issues pertaining to state policy that are not, by virtue of the Constitution or other legislation, reserved to the president, another agency of the state administrative apparatus, or local government.

53.2. Above all the Council of Ministers:

1) Ensures the implementation of laws;

2) Issues decrees having the force of law while observing the conditions contained in Article 23 of this law;

3) Directs, coordinates, and oversees the work of all other agencies of the state administrative apparatus and is accountable for their work before the Sejm;

4) Protects the interests of the State Treasury on the basis of laws;

5) Prepares a draft budget and other financial plans of the state and following their approval by the Sejm, directs their implementation;

6) Oversees, within the limits and in accordance with the forms provided by the Constitution and other legislation, local government and other forms of self-administration;

7) Maintains relations and concludes agreements with the governments of other states as well as with international organizations;

8) Ensures the external and internal security of the state;

Article 54.1. The Council of Ministers (the government) comprises:

1) The chairman of the Council of Ministers;

2) Deputy chairmen of the Council of Ministers;

3) Ministers;

4) Chairmen of the committees and commissions that exercise the functions of the highest agencies of the state administrative apparatus and are so defined by law;

54.2. In the event that a deputy chairman of the Council of Ministers is not appointed, such duties may be performed by one of the ministers;

54.3. The Council of Ministers functions as a collective decisionmaking body. The organization of its work and the manner in which that work is conducted is regulated by law.

Article 55.1. In order to implement laws and on the basis of the powers contained in those laws, the Council of Ministers issues decrees.

55.2. The Council of Ministers adopts resolutions in the course of exercising its constitutional powers.

Article 56.1. The chairman of the Council of Ministers directs the work of the Council of Ministers as well as coordinates and oversees the work conducted by individual ministers.

56.2. The chairman of the Council of Ministers is the highest authority within the state administration for all employees of the state administrative apparatus.

56.3. In order to implement laws and on the basis of the powers contained in those laws, the chairman of the Council of Ministers issues decrees.

Article 57.1. The minister directs a specific department of the state administration. The Purview of ministerial activity is regulated by law.

57.2. The minister directs a specific department of the state administration with the assistance of secretaries of state and undersecretaries of state appointed by the chairman of the Council of Ministers acting on a recommendation made by the minister.

57.3. In order to implement laws and on the basis of the powers contained in those laws, the minister issues decrees and directives.

57.4. On the recommendation of the chairman of the Council of Ministers, the Council of Ministers may annul a ministerial decree or directive.

Article 58.1. The president designates the chairman of the Council of Ministers and on his recommendation, appoints the Council of Ministers proposed by the chairman of the Council of Ministers within 14 days of the first session of the Sejm or of the acceptance of the resignation of the previous Council of Ministers. The appointment of the chairman of the Council of Ministers by the president occurs at the same time as the appointment of the Council of Ministers.

58.2. No later than 14 days after his appointment by the president, the chairman of the Council of Ministers is to submit the Council of Ministers program to the Sejm and request that a vote of confidence be passed. The Sejm passes a vote of confidence if an absolute majority is obtained.

Article 59.1. In the event that a Council of Ministers is not appointed in accordance with Article 58, within 21 days, the Sejm is to elect a chairman of the Council of Ministers and the Council of Ministers that he proposes by means of an absolute majority vote. The president appoints the government thus elected and the government is sworn in by the president.

Article 60. In the event that a Council of Ministers is not appointed in accordance with Article 59, the president appoints the chairman of the Council of Ministers and the Council of Ministers on the recommendation of the

chairman in accordance with Article 58 with the qualification that the Sejm is to pass a vote of confidence.

Article 61. In the event that a Council of Ministers is not appointed in accordance with Article 60, within 21 days, the Sejm is to elect a chairman of the Council of Ministers and the Council of Ministers that he proposes by means of a majority vote. The president appoints the government thus elected and the government is sworn in by the president.

Article 62. Recommendations concerning the appointment of the minister of foreign affairs, the minister of national defense, and the minister of internal affairs are submitted by the chairman of the Council of Ministers after consultation with the president.

Article 63. In the event that a Council of Ministers is not appointed in accordance with Article 61, the president is to dissolve the Sejm or appointment a chairman of the Council of Ministers and a Council of Ministers within 14 days and for a period not exceeding six months. If the Sejm fails to pass a vote of confidence in that government or passes a vote of no confidence in it in accordance with Article 67, Paragraph 4 before the end of that period, the president is to dissolve the Sejm.

Article 64. The chairman of the Council of Ministers and ministers are to take the following oath before the president: "Assuming the office of chairman of the Council of Ministers (minister), I solemnly swear to remain faithful to the provisions of the Constitution and always to regard the well-being of the fatherland and of its citizens as my supreme duty." The oath may also be taken with the addition of the words: "So help me God."

Article 65. The chairman of the Council of Ministers tenders the resignation of the government to the president in the event that:

- 1) A newly elected Sejm is constituted;
- 2) The further performance of duties is relinquished by the Council of Ministers or the chairman of the Council of Ministers;
- 3) The Sejm fails to pass a vote of confidence in the Council of Ministers;
- 4) The Sejm passes a vote of no confidence.

Article 66.1. In the event that the chairman of the Council of Ministers tenders the resignation of the government for the reasons contained in Article 65, Points 1-3, the president is to accept the resignation.

66.2. On accepting the resignation of the government, the president is to entrust that government with the continued exercise of duties until a new Council of Ministers is appointed.

Article 67.1. The Sejm may pass a vote of no confidence in the Council of Ministers by means of an absolute majority.

67.2. A vote of no confidence may be proposed by at least 46 deputies and is to be held not before seven days have elapsed from the date on which the vote is proposed.

67.3. In the event that a vote of no confidence is not passed, a period of three months has to elapse from that time before a proposal to hold a further vote may be submitted. The period of three months does not have to be adhered to, if a proposal to that effect is submitted by no fewer than 115 deputies.

67.4. In passing a vote of no confidence, the Sejm may at the same time elect a new chairman of the Council of Ministers and entrust him with the mission of forming a government in the manner provided by Article 59.

67.5. If the Sejm passes a vote of no confidence without electing a new chairman of the Council of Ministers at the same time, the president is to accept the resignation of the government or dissolve the Sejm.

Article 68.1. The Sejm may pass a vote of no-confidence in an individual minister. The provisions of Article 67, Paragraphs 1-3 are applicable in this respect.

68.2. A minister in whom the Sejm has passed a vote of no-confidence is to tender his resignation, and the resignation is to be accepted by the president.

Article 69.1. The minister may relinquish the further performance of his duties by submitting his resignation to the chairman of the Council of Ministers.

69.2. On the recommendation of the chairman of the Council of Ministers, the president may appoint and dismiss individual ministers.

Article 70.1. The voivode is an agent of the state administration and a representative of the Council of Ministers in the voivodship.

70.2. Procedures for the appointment and dismissal of voivodes and the purview of activities conducted by voivodes are regulated by law.

Chapter 5. Local Government

Article 71.1. Local government is the basic form of organization for public life at the local level.

71.2. Local government units are legal entities by virtue of being communities of the inhabitants of a given region in law.

71.3. The right of ownership and other property rights enjoyed by local government units constitute community property.

71.4. The basic local government unit is the gmina [township]. The remaining local government units are regulated by law.

Article 72.1. Local government performs, within a legal framework, an important part of public tasks with the exception of those tasks that are reserved by law as being within the purview of the government administration.

72.2. Local government units perform the public tasks assigned them in their own name and bear sole responsibility to satisfy the needs of inhabitants.

72.3. To the extent regulated by law, local government units perform the tasks of government administration. To this end, they are provided with appropriate financial resources.

72.4. Local government units perform tasks through their decisionmaking and executive agencies and are free to determine their internal structure within the limits set by law.

Article 73.1. Elections to local government decision-making agencies are universal, equal, and by secret ballot.

73.2. Inhabitants may make decisions by means of the local referendum. The procedures for the conduct of the local referendum are regulated by law.

Article 74.1. The revenue of local government units comprises revenue generated by the units themselves, subsidies, and grants.

74.2. The sources of revenue for local government units with regard to public tasks are guaranteed by law.

Article 75.1. Supervision of the activities of local government units is exercised in accordance with the principle of compatibility with the law with the qualification contained in Paragraph 2.

75.2. Supervision regarding matters concerning government administration is in addition based on the principle of expediency.

75.3. The supervision described in Paragraphs 1 and 2 are regulated by law.

Article 76.1. Local government units enjoy the right of assembly.

76.2. The principles governing the right of assembly are regulated by law.

Chapter 6. Interim and Final Provisions

Article 77. The provision of Article 8 does not apply to persons who have assumed office before the day on which this law takes effect.

Article 78. The Constitution of the Republic of Poland of 22 July 1952 lapses (DZIENNIK USTAW, 1976, No. 7, Item 36; 1980, No. 22, Item 81; 1982, No. 11, Item 83; 1983, No. 39, Item 175; 1987, No. 14, Item 82; 1988, No. 19, Item 129; 1989 No. 19, Item 101, No. 75, Item 44; 1990, No. 16, Item 94, No. 29, Item 171, No. 77, Item 397; and 1991, No. 41, Item 176, No. 119, Item 514) except for the provisions of Chapters 1, 4, 7, excluding Article 60, Paragraph 1, as well for the provisions of Chapters 8-11.

Article 79. The law takes effect 14 days from the day of its publication.

Law on Budget for 1992

92EP0549A Warsaw RZECZPOSPOLITA (ECONOMY AND LAW supplement) in Polish 23 Jun 92 p X

["Law Governing the Budget for 1992: 337,650,000,000 Zlotys in Receipts; 403,150,000,000 Zlotys in Expenditures"]

[Text] Article 1.1. The following are to be the receipts of the state budget: 337,650,000 million zlotys [Z].

Of which:

1) Tax receipts: Z267,580,000 million

Of which:

a) Sales tax: Z114,900,000 million

b) Income tax: Z133,680,000 million

c) Tax on wage increases: Z16,900,000 million

d) Other taxes: Z2,100,000 million

2) Current nontax receipts: Z59,870,000 million

Of which:

a) Interest and dividends: Z12,500,000 million

b) Payments by the National Bank of Poland: Z8,635,000 million

c) Customs duties: Z24,200,000 million

d) Payments by other budget units: Z9,435,000 million

e) Other receipts: Z5,100,000 million

3) Receipts from sale and lease of property components: Z10,000,000 million

4) Interest earned on foreign credit granted: Z200,000 million.

1.2. The following are to be the expenditures of the state budget: Z403,150,000 million

Of which:

1) Subsidies for funding economic targets: Z24,062,230 million

Of which:

a) Subsidies for organizational units: Z5,520,000 million

b) Subsidies for goods and services: Z4,310,000 million

c) Miscellaneous subsidies: Z12,070,000 million

d) Enterprise investment subsidies: Z2,162,230 million

2) Social security: Z81,700,000 million

3) Budget-unit expenditures: Z232,551,400 million

Of which:

—Enterprise spending: Z22,827,766 million

—Science: Z7,893,800 million

—Education: Z33,084,268 million

—Higher education: Z8,739,200 million

—Culture and art: Z3,042,193 million

—Health care, physical culture and sports, tourism, and recreation: Z50,821,000 million

—Social care: Z25,652,000 million

—State administration: Z8,803,796 million

—Administration of justice and the procurature: Z5,185,310 million

—Public security: Z11,963,000 million

—National defense: Z24,148,000 million

—The cost of privatizing Treasury property: Z710,000 million

—Other expenditures: Z2,081,405 million

—Targeted reserves and unallocated expenditures: Z27,599,662 million

Of which:

Targeted reserve for financing wage increases: Z23,957,200 million

4) Servicing of foreign debt: Z13,095,150 million

5) Bank clearings, servicing of national debt, and guarantees: Z43,770,000 million

6) General reserve of the Council of Ministers: Z400,000 million

7) General subsidies for local governments: Z7,571,220 million

1.3. Deficit of state budget toward the end of 1992 is to be Z65,500,000 million.

1.4. The following are to be the sources of financing the deficit of the state budget:

1) Domestic financing: Z61,900,000 million

Of which:

a) Within the banking system: Z51,900,000 million

—Growth of debt in 1992: Z76,186,917 million

—Debt payments in 1992: Z24,286,917 million

Of which:

—Coupons issued for the PKO PB Bank: Z9,002,380 million

—Converted voivodship credits: Z879,350 million

—Credits for infrastructural investments for housing cooperatives: 5,000,000 M

—Treasury bonds denominated in U.S. dollars: \$5,838,040 million

—Promissory notes of the Debt Servicing Fund: Z3,565,289 million

b) Outside the banking system: Z10,000,000 million

2) Foreign financing: Z3,600,000 million

Article 2. The minister of finance is authorized to increase, during the period from 1 January until 31 December 1992, the Treasury's debt owing to:

1) Sale of short-term (shorter than one year) Treasury securities (including Treasury coupons) and credits in commercial banks:

—Up to the amount of Z50,000,000 million

2) Purchase of Treasury coupons by the NBP (the central bank, National Bank of Poland):

—Up to the amount of Z30,000,000 million

3) Sale of long-term (at least one-year) Treasury bonds:

—Up to the amount of Z15,000,000 million

Article 3. The receipts and expenditures of state non-budget units and their clearing of accounts with the state budget are as follows:

1) Unit receipts: Z9,766,589 million

2) Subsidies from the budget: Z3,981,652 million

3) Expenditures exclusive of payments to the budget: Z13,588,558 million

4) Payments to the budget: Z690,039 million

Article 4.1. The receipts and expenditures of the state budget and the nonbudget units are fixed for discrete ministerial budget line items and for the voivodes pursuant to Supplement No. 1.

4.2. The plans for receipts and expenditures of targeted state funds are determined pursuant to Supplement No. 2.

4.3. the list of the centralized investment projects implemented in 1992 is contained in Supplement No. 3.

Article 5.1. The overall amount of subsidies for goods and services is fixed at Z5,520,000 million.

5.2. The scope of the goods and services to which apply the subsidies referred to in Paragraph 1 is defined in Supplement No. 4.

5.3. The minister of finance may, in consultation with the concerned ministers, adjust the size of discrete subsidies within the overall amount defined in Paragraph 1.

Article 6.1. Subsidies in the overall amount of Z2,228,000 million are allocated for the partial funding of the spending on biological progress in plant and animal production, dissemination of farming advice, combatting of contagious animal diseases, monitoring of food products of animal origin, the production and transportation of fertilizer lime from local sources, certain types of work on agricultural geodesy and the application of chemicals to agriculture, improvements in the treatment of water and liquid wastes, and maintenance of basic land reclamation facilities, as well as for companies engaging in land reclamation.

6.2. Subsidies in the following amounts are allocated for:

1) Complementing the funds for the restructuring of agriculture and its environment, in the amount of Z727,195 million.

2) Partial financing of the investment outlays made in 1992 on installing water supply systems in the countryside and improving the treatment of water and liquid wastes, in the amount of Z150,000 million.

6.3. The minister of agriculture and food industry shall issue, in consultation with the minister of finance, an executive order defining the guidelines and procedure for granting the subsidies referred to in Paragraph 2.

Article 7.1. Subsidies for housing cooperatives, for purposes relating to the maintenance of cooperative housing stock, are allocated in the amount of Z10,620,000 million.

7.2. The minister of land management and construction will issue an executive order defining the guidelines for granting and the procedure for figuring the subsidies referred to in Paragraph 1.

7.3. The allocation and procedure for transmitting subsidies to individual cooperatives will be determined by the voivodes.

Article 8. The subsidy for the Agricultural Market Agency is fixed at altogether Z1,920,000 million.

Article 9.1. The cost of privatizing Treasury property, referred to in Part 14, Section 97, of the Supplement No. 1 to the Budget Law of 1992, may not exceed altogether Z360,000 million and 4 percent of the income derived in 1992 from capital-based privatization.

9.2. The Council of Ministers is authorized to increase the expenditures on restructuring privatized enterprises by an amount not exceeding 40 percent of plan-exceeding receipts from capital-based privatization.

9.3. The minister of finance shall define the guidelines for keeping records of the receipts from the sale of Treasury property and from capital-based privatization.

Article 10. The following are the purposes for which receipts from the sale and lease of Treasury property may be spent:

- 1) Restructuring of the extractive industry.
- 2) Infrastructure of the Polish State Railroads.
- 3) The cost of privatization.
- 4) Subsidies for enterprise investments.
- 5) Farm credit subsidies.
- 6) Restructuring of agriculture.
- 7) Promotion of exports.
- 8) Financing the "Public Credit for Development" Program.
- 9) Subsidy for the Labor Fund for funding active forms of counteracting unemployment.

Article 11. The voivodes are authorized to transmit 10 percent of the receipts from the sales of the facilities released by the Soviet troops temporarily stationed in Poland to the special funds set up for appraising and protecting these facilities and organizing their sale.

Article 12. State budget funds will be used to buy out bank liens relating to the capitalized interest charged on housing loans, in the amount of Z8,491,000 million.

Article 13. A subsidy of Z2,600,000 million allocated for funding the cost of the current maintenance and repair of railroad infrastructure.

Article 14.1. The tables of organization of the Police are fixed at 105,000 positions, of which:

- 1) 25,000 positions in the officer corps.
- 2) 29,000 positions in the warrant officer corps.
- 3) 45,000 positions in the noncommissioned officer corps.
- 4) 6,000 positions in the corps of privates.

14.2. The minister of the interior may adjust the totals of positions between the noncommissioned officer corps and the corps of privates.

Article 15.1. The minister of transportation and navigation is authorized to establish the tariffs for the subsidized conveyance of passengers by motorcoaches at discrete enterprises of State Automotive Transportation.

15.2. the weighted mean of the tariffs referred to in Paragraph 1 may not be higher than the rate determined by the minister of finance under the procedure established in Article 19, Paragraph 3, of the Budget Law of 5 January 1991 (DZIENNIK USTAW [Dz.U.], No. 4, Item 18; No. 34, Item 150; No. 94, Item 421; No. 107, Item 464; and No. 110, Item 475, 1991; No. 21, Item 85, 1992).

Article 16. The state budget units belonging in the Education and Health Care sections of the budget may earmark, with the proviso of Paragraph 2, their receipts for special funds from which they may finance:

1) Basic operating costs, with the exception of salaries and attendant benefits.

2) The cost of deriving additional income up to the amount of that income.

16.2. The provisions of Paragraph 1 do not apply to sanitary-epidemiological stations as regards their receipts from current and preventive monitoring operations.

Article 17.1. Targeted subsidies totaling Z8,641,116 million are earmarked for the operations of local governments sponsored by the central government administration.

17.2. The allocation of the amount referred to in Paragraph 1 among discrete parts and sections of the budgetary classification is defined in Supplement No. 1.

Article 18.1. Targeted subsidies totaling Z1,636,052 million are earmarked for the operating expenses of local governments. Of this amount, for:

1) Infrastructural investments in the areas especially threatened by unemployment, for which subsidies were granted in 1991 pursuant to Article 7 of the Budget Law of 1991 on 23 February 1991 (Dz.U., No.21, Item 89; No. 86, Item 391; and No. 121, Item 528): 90,000 million

2) Subsidies for the investments referred to in Article 20: Z273,000 million

3) Local-government investments which in 1991 had been central investments: Z1,273,052 million

Of which:

a) Building the Kabaty-Warsaw Steelworks Metro Line: Z900,000 million

b) Building the Klimzowiec Liquid Waste Treatment Plant in Chorzow: Z15,328 million

c) Building the Radocha Liquid Waste Treatment Plant in Sosnowiec: Z38,000 million

d) Building the Centrum Liquid Waste Treatment Plant in Siemianowice: Z45,718 million

e) Building a liquid waste treatment plant in Lodz: Z111,601 million

f) Building a liquid waste treatment plant in Gdynia-Debogorze: Z50,000 million

g) Building a liquid waste treatment plant in Elblag: Z17,539 million

h) Building the Czajka Liquid Waste Treatment Plant in Warsaw: Z94,865 million

18.2. Budgetary allocators are authorized to establish or augment, within the limits specified in the Budget Law for a given part or section of line items, targeted subsidies for the operating expenses of local governments, upon immediately notifying thereof the minister of finance.

Article 19.1. Subsidies for nonstate units with the object of implementing state assignments by these units are established at Z2,079,946 million.

19.2. The allocation of the amount specified in Paragraph 1 among the discrete parts and sections of budgetary classification is defined in Supplement No. 1.

Article 20.1. Within the state budget is established a reserve of Z636,000 million for subsidizing investments to create new jobs in regions threatened by high unemployment.

20.2. Of the amount specified in Paragraph 1, a total of Z273,000 million is allocated for subsidizing the related operating expenses of local governments.

20.3. The Council of Ministers shall issue an executive order defining the procedure for filing applications and the guidelines for granting the subsidies referred to in Paragraph 1.

Article 21. A mandatory premium for the Labor Fund is henceforth required of workplaces and of persons who are not workplace employees but are subject to social security or old age pension by virtue of other non-agricultural occupations; the premium is fixed at 2 percent of the withholding tax for social security or for old age pension.

Article 22. The percentile proportion of the mandatory dividend payable by state enterprises [to the state budget] as construed by the Law of 31 January 1989 on the Financial Performance of State Enterprises (Dz.U., No. 6, Item 27, 1992) is fixed at:

- 1) 22 percent until 30 June 1992.
- 2) 10 percent as of 1 July 1992.

Article 23. Eighty percent of the receipts from the sale or liquidation of equipment owned by units under the jurisdiction of the minister of national defense, the minister of the interior, and units of the penitentiary service is set aside for offsetting the cost of sale or liquidation and for the acquisition of new equipment; the remaining 20 percent is transferred to the state budget.

Article 24.1. During the period until 31 December 1992 the provisions of the Law of 31 January 1989 on the Funding of Government Salaries (Dz.U., No. 4, Item 24; No. 48, Item 261; and No. 64, Item 389; and No. 71, Item 417, 1990) do not apply.

24.2. During the period until 31 December 1992, the guidelines for raising salaries do not apply to:

- 1) Penitentiary Service personnel defined in Article 68, Paragraphs 2 and 3, of the Law of 10 December 1959 on the Penitentiary Service (Dz.U., No. 29, Item 149, 1984; No. 35, Item 192, 1989; and No. 94, Item 422, and No. 105, Item 453, 1991).
- 2) Military personnel defined in Article 2, Paragraphs 3 and 4, of the Law of 17 December 1974 on the Salaries of Military Personnel (Dz.U., No. 5, Item 18, 1992).
- 3) Police personnel defined in Article 99, Paragraphs 3 and 4, of the Law of 6 April 1990 on the Police (Dz.U., No. 30, Item 179, 1990; and No. 94, Item 422, and No. 107, Item 461, 1991).
- 4) Personnel of the Office for State Protection, defined in Article 86, Paragraphs 3 and 4, of the Law of 6 April 1990 on the Office of State Protection (Dz.U., No. 30, Item 180, 1990; and No. 94, Item 422, and No. 107, Item 461, 1991).
- 5) Border Guard personnel defined in Article 103, Paragraphs 3 and 4, of the Law of 12 October 1990 on the Border Guard (Dz.U., No. 78, Item 462, 1990; and No. 94, Item 422, 1991).

6) State Fire Brigades personnel defined in Article 85, Paragraphs 3 and 4, of the Law of 24 August 1991 on the State Fire Brigades (Dz.U., No. 88, Item 400).

Article 25.1. The following amounts are earmarked for increases in government salaries and in the salaries of other personnel specified below:

- 1) For increasing the salaries of government employees, governed heretofore by the provisions of the law referred to in Article 24, Paragraph 1, with the exception of the employees of ministries and central offices: Z14,875,000 million.
- 2) For increasing the salaries of the employees of ministries and central offices and persons holding executive positions in the government: Z301,800 million.
- 3) For increasing the salaries of military and other personnel referred to in Article 24, Paragraph 2, Points 1)-5), and candidates and noncareer military: Z2,861,000 million.
- 4) For increasing the salaries of justices of the common courts and prosecutors: Z164,800 million.

25.2. The salary increases referred to in Paragraph 1 take effect as of 1 June 1992.

Article 26. The Council of Ministers

1) Shall determine the salary limits for discrete sections of the budgetary classification (without funding the increases), on making allowance for:

a) The salary limits referred to in Article 17, Paragraphs 1 and 2, of the law of 25 January 1992 on Guidelines for the Financial Operations of the State in 1992 (Dz.U., No. 21, Item 83).

b) The consequences of the introduction of the personal income tax.

- 2) Shall allocate the amounts specified in Article 25, Paragraph 1, Points 1) and 2), among discrete sections of the budget on making allowance for the proportions of government salaries in 1991 and the calculated limits on tables of organization in 1992.
- 3) Shall allocate the amounts specified in Article 25, Paragraph 1, Point 3), among discrete ministries.
- 4) Shall define the guidelines and procedure for allocating the amounts referred to in Points 1) and 2) among discrete organizational units.
- 5) May specify salary line items not comprised within the limits referred to in Points 1) and 2).
- 6) May shift within the limits of the funding of the Ministry of Justice, allocations from planned current expenditures on salaries and benefits, with the object of funding an increase in the employment of court-appointed professional curators.

Article 27.1. At all the budget units, with the proviso of Article 28, salaries in December 1992 may not be higher than 1/12 of the specified limit referred to in Article 26, Point 1), plus 1/7 of the assigned limit referred to in

Article 26, Point 2), and with respect to the teachers to whom applies the Law of 26 January 1982 on the Charter of the Teacher (Dz.U., No. 3, Item 19; No. 25, Item 187; and No. 31, Item 214, 1982; No. 5, Item 33, 1983; No. 19, Item 132, 1988; No. 4, Item 24, and No. 35, Item 192, 1989; No. 34, Items 197 and 198; No. 36, Item 206, and No. 72, Item 423, 1990; No. 95, Item 425, and No. 104, Item 450, 1991) and university teachers—plus one-fourth of that limit.

27.2. The provisions of Paragraph 1 apply correspondingly to the salaries of the military and other personnel referred to in Article 24, Paragraph 2.

Article 28. In the period between 1 June and 31 December 1992 the salaries of justices of the Supreme Court, judges of common courts, prosecutors, and persons holding executive positions in the government are determined with reference to the average wage in the manufacturing sector exclusive of dividends on profits in the first quarter of 1992.

Article 29. The payment of the remainder of the 1991 bonus applicable under the Law of 10 July 1985 on Annual Bonuses from the Plant Bonus Fund at State Organizational Units Which Are Not State Enterprises (Dz.U., No. 32, Item 141, 1985; No. 25, Item 192, 1989; No. 104, Item 450, 1991; and No. 21, Item 85, 1992) is made:

- 1) In April: in the amount of 25 percent of the bonus.
- 2) In June in the amount of the remaining 50 percent of the bonus.

Article 30.1. The minister of finance shall allocate, with the proviso of Paragraph 3, the funds derived from the payment of arrears due the abolished Central Fund for Tourism and Recreation for establishing a special credit line for financing investments in tourism and tourist projects.

30.2. The guidelines for granting credits from the funds referred to in Paragraph 1 shall be defined by the minister of finance in cooperation with the chairman of the Office for Physical Culture and Tourism.

30.3. The funds referred to in Paragraph 1 may not exceed Z100,000 million.

Article 31. In the period until 31 December 1992 the provisions of the following laws do not apply:

- 1) Article 63, Paragraph 1, Point 3), of the Law of 17 May 1989 on the Relations Between the State and the Catholic Church in the Republic of Poland (Dz.U., No. 29, Item 154, 1989; No. 51, Item 297, No. 55, Item 321, and No. 86, Item 504, 1990; and No. 95, Item 425, and No. 107, Item 459, 1991).

- 2) Article 48, Paragraph 2, Point 3), of the Law of 4 July 1991 on the Relations Between the State and the Polish Autocephalous Orthodox Church (Dz.U., No. 66, Item 287, and No. 95, Item 425).

Article 32. In the Law of 14 December 1990 on the Receipts of Local Governments and the Guidelines for

Subsidizing Them in 1991 and in 1992, and on Amending the Law on Local Governments (Dz.U., No. 89, Item 518, 1990; and No. 110, Item 475, 1991), in Article 3, Paragraph 1, Point 2) is amended as follows:

“ 2) 2 percent of receipts from the income tax levied on legal entities and organizational units lacking legal entity status which are located on the territory of the gmina [township, i.e., local government], with the proviso of Article 26.”

Article 33.1. The minister of finance may, in the period until 31 December 1992, on the recommendation of a voivode and upon consulting the minister-director of the Office of the Council of Ministers and the concerned ministers, shift spending among the budgetary sections within the framework of the voivode's budget.

33.2. In the case referred to in Paragraph 1 the provisions of Article 45, Paragraph 1, of the Budget Law of 5 January 1991 (Dz.U., No. 4, Item 18, No. 34, Item 150, No. 94, Item 421, No. 107, Item 464, and No. 110, Item 475, 1991; and No. 21, Item 85, 1992) do not apply.

Article 34. For the period until 31 December 1992 the disbursement of compensation payments by the Treasury under the Law of 25 October 1990 on the Restitution of the Property Forfeited by Trade Unions and Social Organizations Owing to the Imposition of Martial Law (Dz.U., No. No. 4, Item 17, 1991) is suspended.

Article 35.1. The minister of finance may allocate funds derived from the sale of the Treasury property managed under Article 7, Paragraph 1, of the Law of 21 April on the Worker Vacations Fund (Dz.U., No. 11, Item 84) by the Worker Vacations Fund for offsetting the financial consequences of the withdrawal of subsidies for that fund from the state budget.

35.2. On the recommendation of the general director of the Worker Vacations Fund the minister of finance gives his consent to the sale of the property referred to in Paragraph 1.

Article 36. In the Law of 25 January 1992 on the Guidelines for Financial Operations of the State (Dz.U., No. 21, Item 83), Article 20 is deleted.

Article 37. The present Law takes effect on the day of its publication, retroactive to 1 January 1992, with the exception of the provisions of:

- 1) Articles 16, 21-29, and 32, which take effect as of 1 April 1992.
- 2) Articles 9, 11, 30, 31, 33, and 34, which take effect on the day of publication.

Statute of Solidarity Trade Union

*AU1108060192 Warsaw TYGODNIK SOLIDARNOSC
No 30 (Special supplement) in Polish 24 Jul 92*

[“Statute of the Solidarity Independent and Self-Governing Trade Union,” adopted at the Fourth National Solidarity Congress held in Gdansk from 11 to 14 June 1992 and in Lodz from 27 to 28 June 1992]

[Text]

Chapter I
Name, Area of Activity,
and Headquarters

Paragraph 1

The Solidarity Independent and Self-Governing Trade Union, henceforth referred to as the Union, created as a result of a workers' protest and set up on the basis of the 31 August 1980 Gdansk agreement between the Interfactory Strike Commission and a Government Commission, pursues activity concerning the defense of workers' interests and the fulfillment of their material, social, and cultural needs.

Paragraph 2

The Union's area of activity is the territory of the Republic of Poland. The Union may pursue activity in the foreign organizational units of workplaces.

Paragraph 3

1. The headquarters of the national authorities are in Gdansk.
2. The Solidarity name and logo are the sole property of the Union and are protected by a legal copyright.

Chapter II
General Principles

Paragraph 4

The Union is independent of employers, state administrative bodies, local government bodies, and political and other organizations.

Paragraph 5

1. Members of the Union are persons employed on the basis of employment contracts (including cooperative employment contracts). In the case of agricultural production cooperatives, its members are persons employed on the basis of membership of this cooperative through choice or appointment. Also members of the Union are students at factory vocational schools who are also employed at the factory in question or are learning their trade, persons performing supervisory work, persons performing work on the basis of a franchise, and people who derive their incomes from sources other than employment. The following may also belong to the Union: Unemployed persons, old-age and disability pensioners, and persons undergoing alternative military service. Loss of employment or a draft into the Army does not automatically result in a loss of membership of the Union.

2. The Congress may confer honorary membership of the Union upon persons who are not qualified to join it in accordance with the above provisions but who have nevertheless rendered outstanding services to the Union. Such membership will be conferred in accordance with rules submitted by the National Commission and approved by the Congress.

Paragraph 6

The Union objective is to defend the rights, honor, and working interests of its members, and in particular to:

1. Protect the health and the material, social, and cultural circumstances of members and their families;
2. Safeguard workers' rights in the context of wages, living conditions, and work safety and hygiene;
3. Harmonize the functioning of a workplace with the interests of its employees;
4. Consolidate the family and protect family life;
5. Extol democratism and consolidate amicable solidarity in interpersonal relationships;
6. Provide workers with the opportunity to raise their professional qualifications;
7. Protect culture and broadly conceived education;
8. Exert an influence on the shaping of economic and social policy;
9. Inculcate a feeling of concern for the welfare of the homeland;
10. Help protect the environment;
11. Propagate knowledge of the Union;
12. Combat unemployment and render assistance to unemployed Union members.

Paragraph 7

The Union fulfills its objectives by:

1. Representing its members vis-a-vis employers, state administrative bodies and authorities, local government bodies, and social institutions;
2. Drafting and terminating collective labor agreements and other agreements between the Union and an employer;
3. Rendering legal aid and intervening in disputes between an employee and his employer;
4. Organizing and directing protest actions in the case of a significant violation of workers' interests, and where there is a particular justification for declaring a strike;
5. Initiating and organizing self-help for Union members;
6. Organizing courses so that members may gain new qualifications;
7. Informing members about the Union's activities and conducting publishing activity;
8. Arranging vacations for members and their families, helping to find housing accommodation for members and places in kindergartens for their children, and arranging for members to receive social benefits out of social and factory funds;
9. Counteracting wrongdoing;

10. Supporting initiatives connected with improving the economy, developing culture, and encouraging education and scientific progress;
11. Performing educational and cultural activity and creating conditions for after-work relaxation;
12. Cooperating with state administrative and local government bodies to the extent provided for by legislation;
13. Checking safety and hygiene at work, undertaking remedial actions permitted by the law in the case of dangers to the life and health of employees, arranging periodical checks of employment positions, and banning members from occupying positions that fail to meet established criteria;
14. Cooperating with the health service in order to protect the health of employees and their families;
15. Investigating the standard of living of workers in general, especially the cost of living;
16. Gauging workers' opinions on draft legislation concerning the lives of working people, workers' representation, workers' participation in the drafting of social legislation and the making of important decisions, the distribution of the national income, paths of investment, the distribution of the social consumption fund, the market supply situation, the housing situation, the shaping of prices and wages, and other matters of importance to working people;
17. Rendering material assistance to Union members;
18. Creating agencies to implement statutory tasks;
19. Conducting commercial activity to gain funds for the performance of statutory tasks;
20. Creating specific funds, especially funds to help workers on strike and unemployed workers.

Paragraph 8

Members of the Union associate on a territorial and branch industrial basis, which means that:

1. The Union's basic organizational unit is the factory cell, which consists of at least 100 workers representing all the trades in a given workplace. Interfactory cells also possess the status of a factory cell. They associate Union members who are employed in places where there is no factory cell;
2. In enterprises and institutions consisting of several sections, Union members may organize themselves in accordance with the regulations described in point (1) above, or they may, following a decision by the employers, form joint representative bodies (Interfactory Coordinating Commissions). These Commissions function in accordance with rules adopted by the National Commission.
3. Persons incapable of associating themselves within their workplaces may create Union organizations within a Union territorial structure;

4. If necessary, a Union factory organization may create lower bodies, especially departmental organizations and circles. Employees of small workplaces may form interfactory union organizations, to which employees of workplaces where there is no factory organization may belong;

5. The Union's basic territorial unit is the chapter. Creating a chapter and altering its area of coverage requires the National Commission's approval;

6. On a recommendation from a factory commission, a chapter administration may create subsidiary bodies that are not actually a tier of Union authority, and determine their structure, the way they are to be set up, their powers, and their methods of finance;

7. Branch industrial structures may exist at chapter and national level.

8. The Union may enter into cooperation agreements with other trade unions if the statutes and activities thereof correspond to the basic principles set out in this Statute.

Paragraph 9

1. The Union authorities at all levels are chosen by means of a vote, but in keeping with the terms of Paragraph 23 of Article 5, and Paragraph 19 of Article 5. Votes are held according to the following principles:

1) Only a person entitled to vote at meetings or congresses may be a candidate;

2) There is no limit to the number of candidates;

3) Voting is for individual candidates;

4) Voting is by secret ballot;

5) The vote is valid if at least half the number of members or delegates participates in it;

6) A chairman is chosen directly by an annual general meeting of an organization at a given level;

7) The following may not simultaneously hold a trade union position:

a) In workplaces—the director, deputy director, chief accountant, legal adviser, departmental director in workplaces with several departments. In cooperatives and companies, no one may hold a trade union position if he is also a member of the board of management, provided he is also employed in the cooperative or company in question;

b) Anyone occupying a managerial position in the state administration or local government body;

c) Anyone with a leadership function in a political organization;

8) Members of Union authorities are recalled in the same way that they were appointed;

9) Delegates are appointed for a single term of office.

2. The trade union function referred to in Paragraph 1 of Article 6 refers to that of a member of a factory commission, chapter board, National Commission, Secretariat Council, and auditing commission.

Paragraph 10

1. Basic organizational units are formed on the initiative of at least 10 persons eligible to form a trade union. They then elect a Founding Committee. The Founding Committee acquires the rights of a Union authority when it has been registered by the chapter administration, and continues to function until statutory authorities of the basic organizational unit have been elected. Elections to the statutory authorities are held within three months of the day on which the Founding Committee was registered at the chapter administration.

2. The Solidarity Independent and Self-Governing Trade Union possesses legal status. The following also possess legal status: basic organizational units as defined in Paragraph 8 of Article 1, Point (1); chapter organizations, and national industrial secretariats.

3. The Union does not bear responsibility for commitments entered into by Union organizational units that possess legal status.

4. The separation of a Union organizational unit from the Union results in the deletion of the organization from the appropriate register, the loss of the right to use the Solidarity name and logo, a ban on financial claims vis-a-vis the Union, and a loss of entitlement to manage the assets of the organization, which are subsequently taken over by a higher-level organization.

Chapter III Members Rights and Duties

Paragraph 11

Members of the Union have the right to:

1. Attend Union general meetings;
2. Elect and recall members of all Union authorities, and be themselves elected to these authorities;
3. Take part in the drafting of instructions for elected delegates;
4. Take advantage of Union assistance in protecting workers and civic rights in the case of a violation thereof by an employer or the state administration; in such cases, the Union is obliged to apply all the resources at its disposal, including strike action. The Union may also intervene and render assistance if other members' rights are violated;
5. Receive child benefits and death grants; should a member die, the death grant is payable to his family;
6. Receive financial assistance from the Union during periods of unemployment as a result of Union activity, and in cases of particular hardship.

7. Take advantage of Union social assistance and cultural and sports facilities, as well as other facilities available to the Union;

8. Present motions and petitions to Union authorities at all levels;

9. Receive current information on all Union decisions and other activities by all Union bodies;

10. Attend meetings at which Union authorities adopt a resolution dealing with him personally.

Paragraph 12

A member of the Union has the duty to:

1. Observe the provisions of the Union statute and resolutions of the Union authorities, and pay his membership dues regularly;
2. Take part in the life of the Union;
3. Attend Union plenary meetings in the organizational unit to which he belongs and meetings of the Union authority to which he has been elected, and in particular attend accountability meetings;
4. Take part in actions undertaken by the Union, and refrain from taking part in the actions of other trade unions without the Union's permission;
5. Take part in shaping proper coexistence between members of the workforce;

Paragraph 13

A member of the Union may not belong to any other trade union. This ruling does not apply to Private Farmers Solidarity.

Paragraph 14

Membership of the Union is conferred the moment when the relevant factory commission (or interfactory commission or departmental commission) adopts a resolution accepting the new member's declaration of friendship.

Paragraph 15

1. Membership of the Union ceases in the following ways:

- a) Resignation from the Union;
- b) Deletion from the register of members;
- c) Expulsion;
- d) Death.

2. A member who persistently neglects his duties as a member or acts in a way that conflicts with the honor of a member may be reprimanded by the relevant factory (or interfactory or departmental) commission. In certain cases, the commission may expel the member;

3. Deletion from the register of members occurs if a member has not paid his membership dues for three months. The factory commission then serves the

member a written notice to pay the arrears within one month at the latest. A failure to comply results in deletion;

4. A member may appeal to the chapter administration against a resolution to expel him from the Union within 14 days of receipt of the resolution. The resolution is then suspended until the chapter administration has reached a decision. This decision is final.

Paragraph 16

Factory, interfactory, and departmental commissions keep registers of members and issue membership cards.

Chapter IV Union Authorities

Paragraph 17

The national authorities are:

1. The National Congress of Delegates;
2. The National Commission;
3. The National Auditing Commission.

A term of office lasts three years.

Paragraph 18

1. The powers of the Congress are:

1. Adopting amendments to the statute;
2. Adopting a general program of Union activity;
3. Establishing upper and lower limits of membership dues;
4. Electing the chairman of the National Commission;
5. Electing members of the National Commission in accordance with Paragraph 19 of Article 4, and electing members of the Auditing Commission;
6. Examining reports by the National Commission and National Auditing Commission;
7. Conferring honorary membership of the Union.

2. The Congress convenes for an ordinary session at least once a year. It is convened by the National Commission. On the recommendation of at least one-third of the chapter administrations, one-fifth of Congress delegates, or the Auditing Commission, the National Commission must convene an extraordinary session of the Congress within the space of three months. Should the National Commission fail to convene the Congress within this time, the Auditing Commission will do so;

3. The Congress is attended by delegates of Union chapter organizations who were elected at annual meetings of chapter administrations. The method of electing these delegates and the number of delegates from each chapter organization is determined by the National Commission, taking into account the number of Union members in a given chapter.

4. For a Congress resolution to be valid, at least half of all delegates must take part in the vote.

5. The Congress adopts resolutions by a simple majority of votes. In the case of resolutions to amend the Statute, there must be an absolute majority of votes in favor from delegates entitled to take part in the Congress. A resolution to disband the Union is passed by an absolute majority of votes, and becomes valid when it has been confirmed by at least half of the chapter administrations that gather at least half of all members of the Union.

6. Resolutions are passed by a show of hands, but the Congress chairman may decree another form of voting if at least one-tenth of the delegates insist on it.

Paragraph 19

The National Commission is superior to the chapter administrations, secretariats, and branch industrial sections.

1. The National Commission's activity consists of:

1. Representing the entire Union vis-a-vis the authorities and bodies of the state administration, as well as other organizations and institutions;
2. Coordinating activities between all Union organizational structures, and adopting rules that are binding on all of them;
3. Adopting the budget;
4. Registering national branch industrial structures;
5. Concluding collective agreements, with the possibility of delegating its powers to other Union structures;
6. Reaching decisions about entering into a collective dispute or a strike that covers more than one chapter;
7. Electing the members of the Presidium.

2. The Presidium consists of a chairman, deputy chairman or chairmen, secretary, treasurer, and any other members of the National Commission that the Commission may choose to appoint.

3. The chairman of the Presidium represents the National Commission externally. He directs the work of the National Commission and its Presidium, and is obliged to supervise and implement the performance of duties by members of the National Commission and its Presidium.

4. The powers of the Presidium of the National Commission are:

1. Directing the Union's current activity in accordance with the resolutions of the Congress and the guidelines laid down by the National Commission;
 2. Undertaking legal action, whereby at least two persons in the Presidium must be involved in this;
 3. Reaching financial decisions in accordance with National Commission resolutions.
5. The National Commission consists of:

1. The chairman of the National Commission;
2. Chairmen of the chapter administrations;
3. Chairman of the National secretariats;
4. Other persons selected by the Congress out of Congress deputies.

Paragraph 20.

1. The national Auditing Commission controls the National Commission and its Presidium as far as financial activity is concerned, seeing that this activity conforms to the Statute and the resolutions of the National Congress.

2. The National Auditing Commission is empowered to instruct any auditing commission in our Union to undertake any kind of control activity that falls within its scope, and to present suitable reports and information.

3. The National Auditing Commission is authorized to control any Union structures in a way similar to the National Commission, provided the National Commission grants its consent.

4. The National Auditing Commission may also appoint a special arbitration team to resolve internal union conflicts.

5. With prior written permission, the National Auditing Commission may recommend to the National Commission the deletion, from the national register of chapters, of any chapter organization that refuses to submit monthly membership dues to the national Commission for three months.

6. A member of the National Auditing Commission may not hold any other Union function at national level. This does not apply to the function of delegate at a Congress. In addition, he may not take part in controls into the activity of a Union structure of which he is a member.

Paragraph 21

The Union chapter authorities are:

1. The General Assembly of Delegates;
2. The Chapter Board;
3. The Chapter Auditing Commission;

The term of office is three years.

Paragraph 22

1. The General Assembly of Delegates has the authority to:

1. Approve programs for the activities of the Union chapter organization;
2. Elect the chairman and the members of the Chapter Board and the Chapter Auditing Commission, whose number will be determined by the General Assembly of Delegates;
3. Elect delegates to the Union Congress;

4. Examine accountability reports prepared by the Board and the Chapter Auditing Commission and to approve Board accounts;

5. Determine the level of membership dues within the limits set by the Congress (Paragraph 18 of Article 1, Point (3));

2. The Chapter Board convenes sessions of the General Assembly of Delegates. The General Assembly of Delegates decides how many regular sessions will be held. The Board must convene extraordinary sessions when those are requested by the Auditing Commission, factory commissions representing at least one-fifth of the members of the chapter organizations, or one-fifth of the delegates to the General Assembly of Delegates. If the Board does not convene a General Assembly of Delegates within one month of such a request being lodged, then the General Assembly is convened by the Auditing Commission.

3. The General Assembly of Delegates is attended by delegates from union organizations. The way in which delegates are selected as well as the number of delegates representing individual organizations are determined by the Board in a manner commensurate with the number of members.

4. For a resolution passed by the General Assembly of Delegates to be valid, at least half the number of delegates have to vote on it.

5. The General Assembly of Delegates passes a resolution if it has obtained the support of a simple majority.

6. The provisions of Paragraph 18 of Article 6 apply to the adoption of resolutions.

Paragraph 23

The Chapter Board has authority over factory commissions and chapter industrial branch structures.

1. The Board is responsible for:

1. The election of members of the Board Presidium with the exception of the chairman;

2. Representing the Union chapter organization vis-a-vis employers, state and economic administrative organs and bodies, local government, as well as other organizations and institutions in the given region. The Board acts through the Union's national authorities in the case of matters of a supraregional character that lie outside the purview of the administrative organs and bodies in a given region;

3. Setting guidelines for activities pursued by the Union chapter organization;

4. Periodically assessing the work of the Board Presidium;

5. Approving the chapter organization budget;

6. Making decisions concerning strikes at the request of the Presidium.

2. The number of members of the Board is determined by the General Assembly of Delegates.

3. The Presidium of the Chapter Board comprises: the chairman, deputy chairman or chairmen, the secretary, the treasurer, and other members of the Chapter board whose number has been determined by the General Assembly of Delegates. The General Assembly of Delegates may authorize the Board to determine the number of members of the presidium.

4. The powers and duties of the chairman of the Board are defined under Paragraph 19 of Article 3.

5. The Chapter Board consists of:

1. The chairman of the Chapter Main Board;
2. The members elected by General Assembly of Delegates;
3. Representatives of regional industrial branch structures elected in accordance with decisions made by the General Assembly of Chapter Delegates.

Paragraph 24

The powers of the Board Presidium are:

1. As under Paragraph 19 of Article 4;
2. To lodge requests with the Board for the staging of strikes that extend beyond an individual plant but lie within the geographic boundaries of the given chapter.

Paragraph 25

The powers of the Chapter Auditing Commission are defined in Paragraph 20, with the proviso that the Chapter Auditing Commission also oversees the activities of the Chapter Board and its Presidium to ensure that they conform to the resolutions passed by the National Commission and the General Assembly of Delegates.

Paragraph 26

1. Factory organization authorities are:

1. The Factory Assembly of Members or the Factory Assembly of Delegates;
2. The Factory Commission;
3. The Factory Auditing Commission.

2. The powers and functioning of the factory authorities are defined by the appropriate provisions of the statute concerning the authorities of Union chapter organizations except that:

1. The Factory Assembly of Members (Delegates) determines the internal structure of the factory organization;
2. Matters above the factory level that are outside the authority of the employer (founding body) are raised by the Commission through its chapter authorities or chapter industrial branch structures within the framework of their powers;

3. The Factory Commission also has the authority to exercise rights stemming from the Labor Code and the Law on Trade Unions (in the majority of workplaces, these rights may be exercised—on the basis of Factory Commission authority—by Department Commissions or the Presidium of the Factory Commission, and in particular:

a) The adoption of resolutions pertaining to the use of the social and housing funds in the manner envisaged by the regulations on trade unions;

b) The adoption of resolutions pertaining to employment, promotion, bonuses and premium payments for employees and the termination of contracts of employment in the manner envisaged by the provisions of the Law on employment; in larger workplaces such functions are performed by Department Commissions and the Presidium of the Factory Commission;

c) The conclusion of agreements with the employer pertaining to wages and conditions of employment;

4. The Factory Commission may appoint a Presidium to which it may transfer some of its powers;

5. The number of members of the bodies referred to in Paragraph 1 of Article 2, Point (3) is determined by the Factory Assembly of Members (Delegates);

Paragraph 27

The appropriate provisions concerning factory organizations apply to the authorities of interfactory organizations in the sense defined in Paragraph 8 and to their powers and operation;

Paragraph 28

1. The circle and its work is directed by the Circle Commission through the general assembly of Circle members.

2. The chairman of the Circle performs an opinion-forming function on matters relating to the Circle and its members.

3. Factory, Department, and the Interfactory Commission may recommend that the issues set out in Paragraph 26 of Article 2, Point (3) be dealt with by Circle Commissions or chairmen.

Chapter V Industrial Branch Structures

Paragraph 29

1. Industrial branch structures are:

- a) Chapter sections;
- b) Chapter secretariats;
- c) National sections;
- d) National secretariats.

2. The operation of industrial branch structures is financed by the National Commission in accordance with the principles contained in the finance resolution

adopted by the National Delegate Congress and in accordance with Paragraph 49 of Article 4 of this statute.

Paragraph 30

1. Chapter Industrial Branch Sections are appointed by the relevant primary organizational units of the Union and registered by the Chapter Board on the basis of resolutions adopted by the relevant organizational units and internal regulations approved by the Chapter Board.

2. Decisions denying registration are made by the Chapter Board. Such decisions may be appealed within 14 days through the Chapter Auditing Commission. Should the Chapter Auditing Commission issue a negative judgment, a final decision is made by the Chapter Main Administration.

3. The industrial branch authorities of the chapter section are:

- a) The General Assembly of delegates;
- b) The Council of the Chapter Section;
- c) The Section Auditing Commission.

4. Decisions pertaining to the formation of chapter secretariats and the representation of industrial branches and occupations are made by the Chapter General Assembly of Delegates.

Paragraph 31

1. National Sections are appointed by the Chapter Sections in a given industrial branch and registered by the National Commission on the basis of resolutions adopted by the relevant branch sections and internal regulations approved by the National Commission.

2. Decisions denying registration are made by the National Commission in accordance with the principles defined in Paragraph 30 of Article 2.

3. The authorities of the industrial branch national section are:

- a) The General Assembly of Delegates;
- b) The Council of the National Section;
- c) The Section Auditing Commission.

4. In special cases, the National Commission may register a National Section that is not appointed by a Chapter Section or may also permit primary organizational units of the Union in Chapters in which there are no Chapter Sections to belong to the National Section. When registering such a National Section, the National Commission will determine its internal structure.

Paragraph 32

1. National Sections may jointly form a National Industrial Branch Secretariat in accordance with principles defined by the National Commission.

2. Secretariat authorities are:

- a) The Secretariat Congress;

b) The Secretariat Council;

c) The Secretariat Auditing Commission.

3. The number of secretariats may not exceed 15.

There is in addition a National Secretariat for Retirement and Other Benefit Recipients.

4. Secretariat chairmen are members of the National Commission.

Paragraph 33

All the authorities of industrial branch structures are elected in accordance with Paragraph 9 of this statute.

Paragraph 34

1. Through their authorities, all the industrial branch structures defined in Paragraphs 29, 30, 31, and 32 represent their member Union primary organization units in relation to the appropriate union authorities, employers, state administrative organs, local authorities, union organizations as well as foreign and domestic organizations, and represent them with respect to issues concerning a given industrial branch as authorized by national or chapter authorities.

Paragraph 35

1. Industrial branch structures prepare and appraise draft collective labor agreements, appraise draft legislation relating to specific branches of industry or plant and carry out other tasks on the recommendation of Union authorities.

2. The National Commission may authorize a section or secretariat to conclude collective labor agreements on its behalf.

3. Recipients of retirement and other pensions may form circles attached to factory commissions or form chapter commissions. At the chapter, recipients of retirement and other pensions may form "Solidarity" Chapter Sections for Recipients of Retirement and Other Pensions.

Paragraph 36

Occupational or issue-related sections may be formed at every level of the Union's structure. This may be done by interested factory organizations and the sections are to be registered by the Chapter Board or the National Commission.

Chapter VI The Strike

Paragraph 37

Disputes with employers or the state administration are to be resolved by means of negotiations and if such negotiations fail to produce results, the Union may initiate protest action, including strike action.

Paragraph 38

1. A strike may either be a warning strike or a full strike:

1. If circumstance permit, a full strike should be preceded by a warning strike;

2. A full strike is to last until the appropriate union authorities declare it to be over. The termination of a strike must be the subject of an agreement with the employer or the state authorities.

2. If the cause of a strike is a conflict at a single workplace, a strike may only be declared if the proposal to stage such a strike is passed by a simple majority of the members of the Union factory organization.

3. If circumstances other than those mentioned in Article 2 are the cause of the strike, the decision to stage a strike is made by the chapter organization board, which also defines the extent of strike action. Decisions to stage strikes extending beyond a given chapter region are made by the National Commission.

4. Workforces are authorized to initiate immediate strike action should punitive measures be instituted against Union authorities and Union authorities thus prevented from making an appropriate decision.

5. In the event that the declaration of a strike at a particular workplace fails to produce results, national or chapter union authorities may declare solidarity strikes.

Paragraph 39

The aforementioned decisions do not apply to the employees of plants that may not strike in view of the functions performed by those plants. Solidarity strikes may be declared in support of the demands of such employees.

Chapter VII The Center for Social and Vocational Research and Publications

Paragraph 40

1. The Union operates a Center for Social and Vocational Research for conducting studies of living and employment conditions, employee maintenance costs, as well as the preparation of studies concerning socioeconomic policy to meet Union needs.

2. The Center's structure, operation, and funding are determined by the Presidium of the Union National Commission.

3. Union chapter organizations may establish similar centers for studying matters concerning a given region, occupation, or branch of industry.

Paragraph 41

The Union possesses its own media. Their status is determined by union authorities at appropriate levels.

Chapter VIII Procedures Governing Breaches of the Statute or of Resolutions by Union Authorities

Paragraph 42

1. Union authorities of all branches and structures are obligated to conduct union activity according to the Statutes and resolutions of the higher authorities.

2. The conducting of activities by Union authorities not in accordance with the Statutes or with the resolutions of the Union's higher authorities result in the initiation of proceedings described in the following paragraphs.

Paragraph 43

1. At the request of the Chapter Auditing Commission, the Chapter Board may adopt a resolution suspending the activities of a Factory Commission that is acting in a manner that violates the Statute or resolutions adopted by the Congress, the Chapter Board, or the National Commission.

2. Should the activities of a Factory Commission be suspended, its statutory duties and powers are assumed by the Chapter Board or a Proxy Main Board appointed for that purpose.

3. In the event of the Board's adopting a resolution under Article 1, the Auditing Commission of the Factory Commission is obliged to call a Factory/Interfactory Assembly of Members/Delegates and hold elections for a new Factory/Interfactory Commission within one month of the adoption of the resolution by the Chapter Board.

4. If an assembly is not convened in accordance with Article 3, such an assembly is convened by the Proxy Main Board. If the newly elected Factory Commission acts in a manner that violates the Statute or resolutions adopted by superior authorities, the Chapter Board may pass a resolution removing it from the chapter register of factory/interfactory organizations.

5. Suspension decisions and decisions removing organizations from the register may be appealed against by the organization within 14 days. The appeal is to be lodged with the Chapter Board. The Board may uphold its original decision if it is approved by a two-thirds majority.

6. The procedure envisaged under Articles 1-5 also applies to chapter industrial branch structures.

Paragraph 44

The provisions contained in Paragraph 43 also apply to violations of the Statute or of resolutions passed by higher authorities when such violations have been committed by the Chapter Board, Industrial Branch Chapter Sections and Secretariats, and Industrial Branch National Sections and Secretariats.

Paragraph 45

1. In the event that a decision adopted by the National Commission is deemed a violation of the Statute by the National Auditing Commission, the National Auditing Commission has the right to call a vote, and if such actions

continue, the National Auditing Commission is obliged to inform National Congress delegates in writing of such actions.

2. If delegates are informed of the circumstances described in Article 1 and if at least one-fifth of congress delegates lodge requests with the National Auditing Commission for the calling of an extraordinary congress, the National Auditing Commission is obliged to convene a congress within two months of such a request.

Paragraph 46

1. In the event that the Chapter Auditing Commission ascertains violations of the Statute or of resolutions adopted by Union authorities during the course of elections to factory organization authorities, it is to apply to the Chapter Board requesting that the election be declared invalid and that new elections be held.

2. Such a request may be submitted within 30 days of factory organization election documents' being lodged with the Chapter Board.

3. After making a decision, the Chapter Board may instruct the Factory Commission or the Factory Auditing Commission to hold elections within one month.

4. In the event that elections are not held within that period, the Chapter Board will, at the request of the Chapter Auditing Commission, remove the factory union organization from the register.

5. Decisions made by the Chapter Board may be appealed against by the parties concerned in accordance with the provisions of Paragraph 43 of Article 5.

Chapter IX Union Funds and Assets

Paragraph 47

1. Union assets comprise immovables, movables, rights, monies, securities, and other forms of assets.

2. Union funds are derived from:

1. Membership dues;
2. Members' contributions to funds for specific purposes;
3. Gifts, bequests, donations;
4. Income from Union assets as well as economic activity pursued with the consent of the relevant union authorities;
5. Cultural, sports, and other events.

Paragraph 48

Funds are assigned for the conduct of statutory activities, especially for union organizational, information, training, social, and educational and cultural activities as well as humanitarian activities.

Paragraph 49

1. Financial activities pursued by Union authorities are based on budgets accounting for all the funds at the disposal of such authorities.

2. Budgets are approved for periods of three months, six months, and one year.

3. Budgets are public, and the implementation of budgets is to be accounted for before the appropriate Union organs.

Paragraph 50

1. Membership dues are levied at the rate of 1 percent of earnings.

2. Detailed principles governing payments and the distribution of the sums obtained from membership dues between factory (interfactory), chapter organizations, industrial branch sections and secretariats and the level of contributions in exceptional situations are defined by the National Delegate Congress in its financial resolution.

3. The Congress of Delegates also determines principles for the financing of social benefits (statutory benefits and other allowances).

4. Costs incurred through union authority activities at the national level are also partially covered by chapter organizations in line with principles defined by the Congress.

5. Primary organizational units that make up industrial branch structures at the chapter and national level may participate in financing their activities in line with section or secretariat regulations.

6. Factory and chapter organizations that do not participate (in the manner stipulated by Congress principles) in sharing the cost of activities pursued by higher level authorities may have sanctions applied against them, ranging from reminders up to removal from the Union register.

Paragraph 51

1. Matters not covered by the provisions of the Statute or disputes over the interpretation of the Statute are resolved through decisions made by the National Commission.

2. The interpretation of the Statute by the National Commission is assessed, at the request of the National Auditing Commission, by the Congress of Delegates.

Paragraph 52

1. In the event that the National Congress of Delegates passes a resolution dissolving the Union, a decision on the disposal of the assets belonging to the "Solidarity" Independent and Self-Governing Trade Union is to be made by the Congress.

2. The decision comes into effect once the resolution dissolving the Union has become binding in accordance with Paragraph 18 of Article 5.

Decision on Indexation of Pensions, Wages
92BA0895B Bucharest DIMINEATA in Romanian
5 May 92 p 3

[Decision of the Romanian Government regarding indexing and payment of state social security, military, and IOVR pensions, and other incomes of the population beginning 1 May 1992]

[Text] **Article 1.1.** Beginning 1 May 1992, as a result of price and rate increases for nonsubsidized goods and services, a 5-percent index is applied to social security, military, IOVR [Invalids, Orphans, and War Widows], and other pensions established by Law No. 42/1990 to honor the memory of martyr heroes and to award rights to their descendants, as well as to those wounded during the Revolution of December 1989.

1.2. As a result of the subsidy reduction for some products and services, pensions indexed according to the provisions of Paragraph (1) are raised by a fixed amount representing a 100-percent compensation for the increase in the prices and rates of subsidized products and services, as well as of nonsubsidized meats and meat products, as follows:

- a) 1,265 lei for age-limit pensions with full seniority and for level I disability pensions;
- b) 1,075 lei for age-limit pensions with incomplete seniority and for level II disability pensions;
- c) 760 lei for level III disability pensions.

The amounts of compensation for levels II and III disability pensions were established at 85 percent and 60 percent of the pension awarded for level I disability, correlated according to law, with the fraction of those pensions in the basic pension.

1.3. Beneficiary pensions are indexed at 5 percent and are increased by a fixed sum compensation representing 50, 75, or 100 percent of the compensation received by the pensioner, depending on whether one, two, three, or more beneficiaries are to be paid.

Article 2. The following incomes are indexed at the general amount of 21 percent, to include the effect of reduced subsidies as well as that of higher prices and rates for other products and services:

- a) Additional pensions from the State Social Security system;
- b) Caregiver reimbursements granted for level I disability pensions;
- c) Public assistance granted on the basis of pension legislation;
- d) Monthly payments granted to mothers of martyr heroes according to Law No. 42/1990, with subsequent modifications;
- e) Compensations and increases granted to invalids, veterans, and war widows based on Law No. 49/1991;

f) Quarterly monetary aid granted according to Decree No. 70/1990;

g) Aid for wives of military personnel in service;

h) Occasional aid granted according to HCM (Decision of the Council of Ministers) No. 454/1957;

i) Support allocations for minors placed with families or entrusted to families or persons;

j) Monthly financial aid established according to Article 14 of Law No. 23/1969;

k) Monthly compensation for each year of detention, internment, house arrest, or relocation, granted on the basis of Decree No. 118/1990, with subsequent additions;

l) Public assistance and compensation stipulated in Article 1 of Government Decision No. 610/1990 Regarding Rights Granted to the Blind.

Article 3. Unemployment assistance for those receiving unemployment payments on 1 May 1992 is indexed at 17.4 percent, corresponding to the indexing coefficient for employees.

Article 4. State allocation for children is increased by 150 lei per child, corresponding to the indexing coefficient for employees.

Article 5. The assistance granted according to law in the case of an employee's or pensioner's death is established at 10,000 lei, and at 8,000 lei in the case of a family member's death.

Article 6. Food allowances for collective consumption in state social units is indexed up to the limit of increases forecast for the food product prices as given in Appendix 1.

Article 7. The amounts of scholarships granted to high school and university students resulting from the indexing of the present decision, are given in Appendix 2.

Article 8.1. Textbooks will continue to be issued free through preuniversity education units.

8.2. The price differential for notebooks and school supplies due to the elimination of subsidies from the budget, will be granted through educational units to high school and university students from low income families, based on a public assistance program.

Article 9. Price differentials resulting from the reduction of subsidies for prostheses and orthopedic products issued according to law, will be supported from social security, public assistance, or other funds as stipulated in current legal regulations.

Article 10.1. Differences in interurban transportation passbook prices for high school and university students from low income families, will be supported from the budget based on a public assistance program.

10.2. For employees, differences between interurban transportation passbook prices up to 30 April, and those

raised after that date, will be supported from the income derived by the commercial companies or autonomous agencies in which the employees work.

Article 11. Public assistance for medicines used for outpatient treatment continues to be assured according to the regulations stipulated in Government Decision No. 219/1991.

Article 12. Rights determined as a function of basic wages for persons who on the date of indexing or later are under temporary work disability, on maternity leave, leave to care for a sick child, leave to care for a less than one-year-old child, or in other situations for which rights are established according to law, will continue to be determined as a function of the new amount of basic wages.

Article 13.1. As of 1 May 1992, the amounts associated with compensation and indexing are included in the rights to which they apply, thus creating new figures for those rights.

13.2. The amounts representing the resulting compensation and indexing are supported from the same funds as the rights to which they apply.

13.3. The amounts of the resulting compensation and indexing in accordance with the present decision, those representing the indexing and compensation stipulated by Government Decisions Nos. 219/1991, 579/1991, 780/1991, 20/1992, and 150/1992, as well as the amounts resulting from the pension increases of Government Decision No. 526/1991, are not included in the calculation of incomes which are used as a base for state fund housing rents, state child allowances, contributions owed by legal supporters of persons residing in public assistance institutions, quarterly and occasional financial aid, reductions granted to employees and pensioners to acquire prostheses and orthopedic products, as well as meal rights in public assistance kitchens.

13.4. The ceilings stipulated by Government Decision No. 360/1991, which are used to establish parental contributions for child care in nurseries and kindergartens, are given in Appendix 3.

Article 14. The cost of hot meals and the food allowance granted according to current regulations to employees of some autonomous agencies and commercial companies with a majority of state shares, and which is supported from production costs established by negotiation of collective labor contracts, will be increased up to 25.6 percent, representing the increase forecast for food product prices.

Article 15.1. Within five days, the Ministry of Labor and Public Assistance and the Ministry of the Economy and Finances will issue specific details regarding the establishment and payment of rights due as a result of implementing the present decision.

15.2. By 8 May 1992, the Ministry of Education and Science, with the endorsement of the Ministry of the Economy and Finances, will draft and present for the

government's approval the public assistance program for high school and university students from low income families, establishing the means for matching price and rate differentials for school supplies and interurban transportation passbooks.

Article 16. By 15 May 1992, the Ministry of the Economy and Finances and the Ministry of Labor and Public Assistance will present to the government the effects of the present decision on the state budget, local budgets, and the Social Security budget, so that they may be submitted for approval by Parliament.

Article 17. It is recommended that units with a majority of private capital, cooperative and public units, and social security units other than state ones, implement the public assistance measures stipulated in the present decision.

Article 18. Failure to respect the provisions of the present decision will result in disciplinary, material, or penal liabilities, as appropriate according to law.

**Decision of the Romanian Government
Regarding the Indexing Coefficient for Wages
and for a Nationwide Minimum Gross Basic Wage,
Stipulated by Government Decision No. 19/1992,
Beginning 1 May 1992**

Article 1.1. For the May-August 1992 period, at commercial companies with majority state capital and at autonomous agencies in which wages are established by negotiation, the fund designed for wages that are exempted from additional tax is determined on the basis of the reference wage fund of October 1991 and on an indexing coefficient of 65 percent with respect to the same period, representing an increase of 17.4 percent with respect to April 1992.

1.2. The 65-percent coefficient stipulated in Paragraph 1 assures:

a) A 100-percent compensation for the higher prices and rates of subsidized products, as well as of nonsubsidized meats and meat products, for a gross amount of 1790 lei per month;

b) A 7.8-percent indexing of wages, representing one-half of the price and rate increase of nonsubsidized products and services, during the May-August 1992 period as compared to April 1992.

Article 2. Beginning on 1 May 1992, the nationwide minimum gross wage for a complete work schedule of an average of 170 hours per month, is established at 11,200 lei per month, which also includes the compensation of 1,790 lei per month, representing 65.90 lei per hour.

Article 3. The provisions of the present decision will be implemented up to the limit of prices and rates registered by economic agents according to Government Decision No. 776/1991.

Article 4. The portions of taxable individual monthly income that will be implemented beginning with the rights of May 1992, as established on the basis of the

indexing coefficient stipulated in Article 1, Paragraph (1), are given in the Appendix.

—Prime Minister Theodor Stolojan

Decree on Modernizing Border Control Points

92BA1227A Bucharest *MONITORUL OFICIAL*
in Romanian 30 Jun 92 pp 1-2

[Romanian Government decision on improving activities at border checkpoints, passed in Bucharest on 26 May 1992]

[Text]

The Government of Romania decrees:

Article 1. In order to modernize and expand the buildings and other facilities necessary for the work of the border-crossing control points listed in the annex, the County Councils of Arad, Bihor, Caras-Severin, Constanta, Dolj, Giurgiu, Mehedinti, Satu Mare, Suceava, Timis, and Vaslui, with the authorization of the Ministries of the Interior, Economy and Finance, Transportation, Commerce and Tourism, Public Works and Regional Development, National Defense, and the Romanian Intelligence Service, will present to the government a detailed program of specific recommendations within 60 days of the passing of the present decision.

Article 2. By 31 August 1992, a traffic lane will be opened at the major road border checkpoints envisaged in the annex for vehicles and persons with "nothing to declare," and for vehicles with CD licenses.

By the same date, the border checkpoints listed in Paragraph 1 will be equipped with a platform for checking vehicles and persons suspected of being in violation of customs laws.

Article 3. By 31 December 1993 the border checkpoints listed in the annex will be provided with one or several traffic lanes, depending on need, for vehicles without CD license plates, buses, and trucks.

Article 4. On the basis of urban development plans, the county councils listed in Article 1, as managers of the investment projects scheduled to be carried out at border checkpoints, will include those objectives in their investment lists for 1992 and 1993; the funds necessary for the work in question will be supplied from the state budget.

Article 5. After the work documentation has been approved and the necessary funds have been appropriated, the investment managers will take measures to carry out the work in accordance with the laws in effect.

Article 6. The work envisaged in the present decision will be carried out in stages: Over the period 1 July-31 December 1992 at the border checkpoints of Petea, Bors, Varsand, Nadlac, and Giurgiu and in 1993 at the other border checkpoints envisaged in the annex.

Article 7. The border control authorities will take measures to ensure that travel documents are checked as efficiently as possible, so that waiting time can be reduced to a minimum.

On the "Nothing to declare" lane, goods will be checked by customs officers at random, in compliance with the law.

Article 8. The provisions of Articles 4, 5, and 7 of the president decision will also be applicable to border checkpoints opened after its enactment.

—Prime Minister Theodor Stolojan

—Constantin Fota, minister of commerce and tourism

Bucharest, 26 May 1992
No. 280

Annex Border checkpoints scheduled to be modernized and expanded:

- Nadlac, Arad County
- Varsand, Arad County
- Bors, Bihor County
- Naidas, Caras-Severin County
- Constanta, Constanta County
- Vama Veche, Constanta County
- Negru Voda, Constanta County
- Ostrov, Constanta County
- Calafat, Dolj County
- Giurgiu, Giurgiu County
- Portile de Fier, Mehedinti County
- Dorolt-Petea, Satu Mare County
- Halmeu, Satu Mare County
- Siret, Suceava County
- Moravita, Timis County
- Jimbolia, Timis County
- Albita, Vaslui County
- Comlosu Mare, Timis County

Law on Organization and Operation of Constitutional Court

92BA1044A Bucharest *MONITORUL OFICIAL*
in Romanian 22 May 92 pp 1-6

[“Text” of the Law on the Organization and Operation of the Constitutional Court]

[Text] The Romanian Parliament passed the present law.

Chapter I: General Provisions

Article 1. (1) The Constitutional Court is the only authority of constitutional jurisdiction in Romania.

(2) The Constitutional Court is independent of any other public authority and is bound only by the Constitution and the present law.

(3) The purpose of the Constitutional Court is to guarantee the supremacy of the Constitution.

Article 2. (1) The Constitutional Court will verify the constitutionality of laws, parliamentary regulations, and government ordinances.

(2) The provisions of the legal acts envisaged in Paragraph (1) will be deemed unconstitutional if they violate the terms or principles of the Constitution.

Article 3. (1) The authority of the Constitutional Court may not be contested by any public authority.

(2) The Constitutional Court is the only one entitled to decide on its authority in compliance with Article 144 of the Constitution.

Article 4. (1) The Constitutional Court judges are independent in the exercise of their duties and irremovable throughout their term in office.

(2) The Constitutional Court judges may not be held accountable for the views and votes expressed upon passing decisions.

Article 5. Public authorities, institutions, autonomous managements, commercial associations, and any other organizations are obligated to produce any information, documents, and acts in their possession requested by the Constitutional Court in the exercise of its duties.

Article 6. The seat of the Constitutional Court is in the Bucharest Municipality.

Chapter II: Organization of the Constitutional Court

Article 7. (1) The Constitutional Court will be made up of nine judges appointed for one, nine-year term that may not be extended or renewed.

(2) Three judges will be designated by the Chamber of Deputies, three by the Senate, and three by the president of Romania.

(3) The Constitutional Court will have one-third of the judges replaced every three years.

(4) At the proposal of the Permanent Bureau and the recommendation of the Legal Commission and by a majority of its members, each Parliament Chamber will designate as judge the person who received the largest number of votes.

(5) Candidates can be entered with the Legal Commission by parliamentary groups, deputies, and senators. Each candidate will present his curriculum vitae and documents attesting to the fulfillment of the conditions envisaged in the Constitution. The candidates will be interviewed by the commission and the Chamber plenum. The report of the Legal Commission will contain grounded arguments about all the candidates.

Article 8. (1) The Constitutional Court will carry on its activities in plenum or in juridical panels formed in accordance with the present law.

(2) The quorum for a Constitutional Court plenum is two-thirds of the number of Court judges.

Article 9. (1) The Constitutional Court will be chaired by a president elected by a majority of the judges by secret ballot for a period of three years, within five days of the Court replacements.

(2) For the election of the president, each group of judges appointed by the Chamber of Deputies, Senate, and the President of Romania may present only one candidate. If none of the candidates wins a majority of votes at the first round of elections, the second round will take place between the two judges who won the most votes or who were drawn if all the candidates received the same number of votes. The procedure for the election of the president will be chaired by the oldest judge.

(3) The president will appoint one judge to act for him in his absence.

Article 10. (1) Should the position become vacant, a president will be elected until the end of the three-year period envisaged in Article 9 Paragraph (1).

(2) The election will take place within five days of the ascertainment of the vacancy, in keeping with the procedure envisaged in Article 9 Paragraph (2).

Article 11. (1) The president of the Constitutional Court will fulfill the following duties:

a) Coordinate the activities of the Constitutional Court and assign the cases to be resolved;

b) Convene and chair the plenum meetings of the Constitutional Court;

c) Represent the Constitutional Court before the public authorities and other Romanian or foreign organizations;

d) Ascertain cases of judges' lapsed mandates as envisaged in the present law and notify the public authorities who appointed them for the purpose of filling the vacancy;

e) Carry out other duties envisaged by law or by the regulations regarding the organization and operation of the Constitutional Court.

(2) The president will act as credit commissioner.

Chapter III Authority of the Constitutional Court

Section 1. Common Provisions

Article 12. (1) Only the cases expressly and restrictively envisaged in Article 144 of the Constitution may be brought to the attention of the Constitutional Court, in the conditions established in the present law.

(2) Notifications must be addressed in writing and contain arguments.

Article 13. (1) In accordance with the authority established in Article 144 of the Constitution, the Constitutional Court will pass decisions and rulings and will issue recommendations as follows:

A) Decisions, in cases in which:

a) It pronounces on the constitutionality of laws before their promulgation, at the notification of the president of Romania, one of the speakers of the two Houses, the

government, the Supreme Court of Justice, at least 50 deputies or 25 senators, and ex officio on initiatives to review the Constitution;

b) It pronounces on the constitutionality of Parliament regulations at the notification of one of the speakers of the two Houses, a parliamentary group, or at least 50 deputies or 25 senators;

c) It decides on exceptions brought before legal instances regarding the unconstitutionality of laws and ordinances;

d) It decides on appeals regarding the constitutionality of a political party.

B) Rulings, in cases in which:

a) It monitors compliance with the procedure for electing the president of Romania and confirms the election results;

b) It ascertains circumstances that justify a period of interim presidency in Romania and it communicates its findings to the Parliament and government;

c) It monitors compliance with the procedure for organizing and holding a referendum and confirms its results;

d) It verifies the existence of conditions for citizens to exercise legislative initiative.

C) Consultative recommendations regarding a proposal to suspend the president of Romania from office.

(2) The decisions and rulings will be pronounced in the name of the law.

Article 14. (1) Trial sessions will be public, except for cases in which the Court president or the trial panel decide to hold closed sessions for justified reasons.

(2) The sides will have access to the file proceedings.

(3) The acts and proceedings of the Constitutional Court on the basis of which the court will pronounce decisions and rulings or issue the recommendations envisaged in Article 13 are not meant for public reporting.

Article 15. Applications addressed to the Constitutional Court do not require stamp taxes.

Article 16. The juridical procedures envisaged in the present law will be complemented by rules of civil procedure, provided they are compatible with the nature of procedure before the Constitutional Court. The compatibility will be decided exclusively by the Court.

Section 2. Juridical Procedure

1. Verifying the Constitutionality of Laws Before Their Promulgation

Article 17. (1) The Constitutional Court will pronounce on the constitutionality of laws before they are promulgated, at the request of the president of Romania, one of the speakers of the two Houses, the government, the Supreme Court of Justice, or at least 50 deputies or 25 senators.

(2) In order to exercise the right to notify the Constitutional Court, five days before the law is sent up for promulgation it will be communicated to the government and the Supreme Court of Justice and deposited with the secretary general of the House of Deputies and the Senate. Should the law have been passed by an emergency procedure, the term is two days.

(3) The date on which the law was deposited with the secretaries general of the Houses will be announced in the plenum of each House within 24 hours of being deposited. The deposition and announcement will take place only on the days on which the Parliament Houses are in plenum.

(4) The parliamentarians' notification will be sent to the Constitutional Court on the day on which it was received by the secretary general of the respective House.

Article 18. (1) If the Constitutional Court was notified by one of the speakers of the two Houses of Parliament, by Parliament members [MP's], by the government, or the Supreme Court of Justice, the Court will communicate the notification received to the president of Romania on the day on which it was registered.

(2) If the notification came from the president of Romania, from MP's, or the Supreme Court of Justice, the Constitutional Court will communicate it within 24 hours of its registration to the speakers of the two Parliament Houses and the government, specifying the date on which the debates will be held.

Article 19. (1) Until the date of the debates the speakers of the two Parliament Houses and the government may present their viewpoints in writing.

(2) The government's viewpoint will be presented only under the prime minister's signature.

Article 20. (1) The debate will be held in the plenum of the Constitutional Court with the participation of the Court judges, on the basis of the notification, documents, and viewpoints received, both on the terms cited in the notification and on those from which they can evidently not be disassociated.

(2) After the deliberations the decision will be pronounced by a vote of the majority of judges and will be communicated to the president of Romania. A decision noting the unconstitutionality of a law will also be communicated to the speakers of the two Parliament Houses, for the purpose of beginning the procedure envisaged in Article 145 Paragraph (1) of the Constitution.

(3) The decision will be published in MONITORUL OFICIAL of Romania.

2. Verifying the Constitutionality of Parliament Regulations

Article 21. (1) The Constitutional Court will pronounce on the constitutionality of Parliament regulations upon

the notification of one of the speakers of the two Houses, a parliamentary group, or at least 50 deputies or 25 senators.

(2) Should the communication come from MP's, it will be sent to the Constitutional Court by the secretary general of the House to which they belong, on the day on which it was filed, and the Constitutional Court will communicate it within 24 hours of registration to the speakers of the two Houses, specifying the date on which the debate will be held.

(3) Until the date of the debate, the speakers of the two Houses may communicate the viewpoints of the Standing Bureaus.

Article 22. (1) The debate will be held in the plenum of the Constitutional Court on the basis of the notification and the viewpoints received.

(2) The decision will be made by the vote of a majority of the Court judges and will be communicated to the House whose regulation was the subject of the debate.

(3) The decision will be published in Romania's MONITORUL OFICIAL.

(4) If the decision verified the unconstitutionality of some of the regulation provisions, the House in question will reexamine the provisions in question for the purpose of bringing them in line with the Constitution.

3. Resolving Exceptions of Unconstitutionality

Article 23. (1) The Constitutional Court will decide in matters of exceptions raised before trial courts regarding the unconstitutionality of laws and ordinances.

(2) If during a trial the court ex officio or one of the sides claims that some provision of a law or ordinance on which the judgment of the action hinges is unconstitutional, the exception raised will be sent to the Constitutional Court to pronounce on the constitutionality of the provision in question.

(3) Legal provisions whose constitutionality was established in accordance with Article 145 Paragraph (1) of the Constitution may not make the object of exceptions.

(4) The court before which the exception of unconstitutionality was raised will notify the Constitutional Court by a report.

(5) The report will feature the sides' viewpoint in support of or against the exception and the view of the court on the exception, and will be accompanied by the proof filed by the sides. Should the exception have been raised by the court ex officio, the report must contain arguments, the viewpoints of the sides, and the necessary evidence.

(6) While the exception of unconstitutionality is being resolved, the court may suspend the trial by means of an argued report. The report may be appealed within five days of pronouncement.

Article 24. (1) Upon receiving the report envisaged in Article 23 Paragraph (4), the president of the Constitutional Court will designate a trial panel made up of three judges and a chairman. The panel chairman will designate one of the judges to act as recording officer.

(2) Should the judge designated as recording officer believe that the exception is obviously unfounded or that it violates the provisions of Article 23 Paragraph (3), he will apprise the chairman for the purpose of convening the trial panel, which may unanimously decide to turn down the exception without summoning the sides.

(3) Should the provisions of Paragraph (2) not be applicable, the recording judge is obligated to communicate the report by which the Constitutional Court was notified to each Parliament House and to the government, indicating the date by which they may present their viewpoints, and will ensure that the necessary measures are taken to produce the evidence on the date of judgment.

(4) The judgment will take place on the basis of the report presented by the recording judge, the report by which the Constitutional Court was notified, the viewpoints presented in accordance with Paragraph (3), the evidence produced, and the claims of the sides, which will be summoned, as will the Public Ministry.

(5) The sides may be represented by lawyers entitled to plead before the Supreme Court of Justice.

Article 25. (1) The decision may be contested by the sides only by appeal, within 10 days of the communication.

(2) The appeal will be tried by a panel made up of five judges, one of whom will be the president of the Constitutional Court or his acting president, who will represent him.

(3) Should the appeal be accepted, the court of appeal will pass judgment, in the same decision, on the exception of unconstitutionality.

(4) The decision of the first instance and that of the appeal instance will be passed by a majority of votes.

Article 26. (1) The final decision ascertaining the unconstitutionality of a law or ordinance constitutes legal grounds for retrying the case upon the request of the side that raised the exception of unconstitutionality in a civil trial.

(2) In penal trials, the decision envisaged in Paragraph (1) will constitute legal grounds to retry the cases in which the sentence was pronounced on the basis of the legal provision that was declared unconstitutional.

(3) The provisions of Paragraph (1) and (2) will be applicable only to juridical reports established after the enactment of the 1991 Constitution. Reparations for damages suffered prior to the enactment of the 1991 Constitution will be settled by law.

(4) Final decisions pronounced in the conditions of Paragraph (1) and (2) will be communicated to the two Parliament Houses and to the government.

(5) The final decisions will be published in Romania's MONITORUL OFICIAL; they are binding and have force only for the future.

4. Observing the Procedure for the Election of the President of Romania

Article 27. The Constitutional Court will monitor compliance with the procedure for the election of the president of Romania and will confirm the result of the election in the conditions envisaged by the law on the election of the president of Romania.

Article 28. The decisions of the Constitutional Court will be passed in plenum by a majority of votes of the Court judges.

5. Judgement of Contestations Regarding the Constitutionality of a Political Party

Article 29. (1) The Constitutional Court will decide on contestations regarding the constitutionality of a political party.

(2) Contestations regarding the constitutionality of a political party may be formulated by the speaker of one of the Houses of Parliament or the government. The House speaker may formulate the contestation only on the basis of a decision adopted by the House by a majority of its members' votes.

(3) The contestation must be argued and accompanied by the evidence on which it rests.

Article 30. (1) In order to settle the contestation, the president of the Constitutional Court will designate a recording judge, who is obligated to communicate it, together with the proving documents, to the political party targeted by the contestation, specifying the date by which it can file a defense memorandum accompanied by the appropriate evidence.

(2) The contestation will be judged by the plenum of the Constitutional Court on the basis of the report presented by the judge designated for the purpose and the evidence produced; the contestator, the political party whose constitutionality is being contested, and the Public Ministry will be summoned, and the decision will be pronounced by a majority vote of the Court judges.

(3) The Parliament House that filed the contestation may be represented by a person designated by it, and the government by the Ministry of Justice. The political party may be represented by a lawyer qualified to plead before the Supreme Court of Justice.

(4) The Court decision is not subject to any contestation and will be published in Romania's MONITORUL OFICIAL.

Article 31. (1) Political parties may be declared unconstitutional in the cases envisaged in Article 37 Paragraph (2) of the Constitution.

(2) The decision to accept the contestation will be communicated to the Bucharest Municipal Tribunal for

the purpose of erasing the unconstitutional political party from the roster of legally formed political parties.

6. Issuing Recommendations for the Suspension of the President of Romania

Article 32. (1) The Constitutional Court may issue a consultative recommendation on a proposal to suspend the president of Romania from office.

(2) A copy of the proposal to suspend the president of Romania from office, together with the evidence on which it is based will be sent to the Constitutional Court by the president who chaired the joint session of the two Houses.

(3) Upon receipt of the application, the president of the Constitutional Court will designate three recording judges, one each of the judges appointed by the Chamber of Deputies, Senate, and the president of Romania, who will carry out all the necessary investigations.

Article 33. (1) The recommendation regarding the suspension of the president of Romania from office will be issued by the plenum of the Constitutional Court, by the majority vote of the Court judges, on the basis of the discussion of the report presented by the three judges designated for the purpose, the suspension proposal, the evidence, and the investigations carried out.

(2) The president of Romania will be apprised of the date set for the discussion and may provide explanations regarding the actions imputed to him.

(3) The recommendation of the Constitutional Court will be communicated to the speakers of the two Houses and to the president of Romania.

7. Ascertaining the Existence of Circumstances Justifying an Interim Presidency in Romania

Article 34. (1) The Constitutional Court will verify the existence of circumstances that justify an interim presidency in Romania and will communicate its findings to the Parliament and the government.

(2) The vacancy of the office of president of Romania will be verified at the request of the speaker of one of the Parliament Houses or of the president ad interim who is filling in for the president of Romania while the latter is suspended from office.

(3) Should the president of Romania have been suspended from office, the request to verify the existence of circumstances justifying the interimacy will be filed by the speaker who chaired the joint session of the two Parliament Houses, on the basis of the decision adopted by the joint session.

(4) If Romania's presidential interimate is due to the president's temporary incapacity to discharge his duties, the request will be made by the president of Romania or by the speaker of one of the Houses of Parliament.

Article 35. The request to ascertain the existence of circumstances justifying an interimacy presidency of

Romania will be accompanied by the necessary evidence, and the verification of such circumstances will be made by the plenum of the Constitutional Court by a majority vote of the judges.

Section 3: Other Provisions

Article 36. The procedure for verifying the existence of the conditions required for citizens to exercise legislative initiative and for verifying compliance with the rules of organization and holding of a referendum and for confirming its results will be established by the laws concerning the regulation of such activities.

Article 37. (1) Before notifying Parliament to initiate the legislative procedure for revising the Constitution, the draft bill or legislative recommendation will be filed with the Constitutional Court, which is obligated to pass judgment on its constitutionality within 10 days.

(2) The decision of the Constitutional Court will be pronounced in plenum by a vote of two-thirds of the Court judges, and will be communicated to those who initiated the draft bill or legislative recommendation, or, according to case, to their representatives. The decision will be published in MONITORUL OFICIAL of Romania.

(3) The draft bill or legislative recommendation may be presented to Parliament only in conjunction with the decision of the Constitutional Court communicated as per Paragraph (2).

Chapter IV: The Constitutional Court Judges

Article 38. (1) The Constitutional Court judges must have advanced law studies, be professionally highly competent, and must have served at least 18 years in a legal capacity or in teaching law at a high level.

(2) The office of judge is incompatible with any other public or private office, with the exception of teaching law at university level.

Article 39. In accordance with the present law, judges may be appointed only with the written prior agreement of the candidate. If the candidate serves in a position incompatible with that of Constitutional Court judge or belongs to a political party, that agreement must contain the candidate's pledge to resign that position or from the political party in question upon the date of his appointment.

Article 40. (1) The Constitutional Court judges will take the following oath before the president of Romania and the speakers of the two Parliament Houses:

"I swear to respect and defend the Constitution and to fulfill my duties as judge of the Constitutional Court in good faith and impartially. So help me God!"

(2) The oath will be taken individually. The Constitutional Court judges will enter office on the date on which they were sworn in.

Article 41. The Constitutional Court judges are obligated to:

a) Fulfill their duties impartially and with respect for the Constitution;

b) Keep deliberations and votes secret and not take public positions or provide consultation on matters falling under the authority of the Constitutional Court;

c) Cast a vote for or against the passing of Constitutional Court acts; abstaining is not permissible.

d) Report to the president of the Constitutional Court any activity that may make them incompatible with their mandate;

e) Not allow their position to be used for purposes of commercial advertizing or any kind of propaganda;

f) Abstain from any activity or manifestation contrary to the independence and dignity of their office.

Article 42. Establishing disciplinary violations by judges, sanctions, and means of implementing them falls under the exclusive authority of the Constitutional Court plenum.

Article 43. (1) The Constitutional Court judges may not be arrested or brought to penal or contraventional trial except with the permission of the Standing Bureau of the Chamber of Deputies, the Senate, or the president of Romania, as the case may be, at the request of the prosecutor general.

(2) The competency for trying Constitutional Court judges for offences belongs to the Penal Section of the Supreme Court of Justice.

(3) As of the date on which a Constitutional Court judge is brought to penal trial, he will be legally suspended from office. If he is finally sentenced, he will be legally removed, and if he is acquitted, the suspension will be lifted.

Article 44. (1) The mandate of Constitutional Court judge ceases:

a) Upon expiration of the term for which the judge was appointed or in case of resignation, forfeiture of electoral rights, legal removal, or death;

b) If the judge is incompatible with or incapable of discharging his office for more than six months;

c) In case of violation of the provisions of Article 16 Paragraph (3) or Article 37 Paragraph (3) of the Constitution, or for serious violation of the obligations featured in Article 41.

(2) The ending of the mandate as per point a) will be verified by the president of the Constitutional Court; in the other cases the ending of the mandate will be decided in plenum by a majority vote of the Court judges.

Article 45. (1) Three months before the expiration of the mandate of each judge the president of the Court will notify the speaker of the Parliament House that appointed the judge or the president of Romania, as the case may be, requesting them to designate a replacement;

the appointment must be done at least one month before the end of the mandate of the previous judge.

(2) If the mandate ceased before the expiration of the term for which the judge was appointed and if the remaining period is longer than six months, the president will notify the public authority envisaged in Paragraph (1) within at the most three days of the end of the mandate, for the purpose of having a new judge appointed. The mandate of the judge thus appointed will cease upon the expiration of the term of the replaced judge.

(3) Should the period for which the new judge was appointed in keeping with Paragraph (2) be shorter than three years, when the Constitutional Court being refilled he may be appointed for a complete nine-year term.

Article 46. (1) When a mandate ends following the expiration of the period for which it was granted, the judge is entitled to return to his previous post, if he was appointed to the Constitutional Court on condition that his post be reserved for him.

(2) If the judge served as a magistrate, that position must be obligatorily reserved.

(3) While being reserved, the post cited in Paragraph (1) and (2) may be filled only under a limited labor contract.

Article 47. The equivalent of the president of the Constitutional Court is the president of the Supreme Court of Justice, and the equivalent of the Constitutional Court judges are the deputy presidents of the Supreme Court of Justice.

Chapter V Specialized and Administrative Personnel

Article 48. (1) The Constitutional Court will have seven assistant magistrates subordinated to the Court president.

(2) The assistant magistrates must have advanced law studies and must have worked at least 10 years in a legal capacity or in higher law education. They will be hired on the basis of competition. The examination panel will be appointed by the president of the Constitutional Court and will be made up of five Court judges.

(3) The equivalent of assistant magistrates are Supreme Court legal advisers.

(4) The assistant magistrates will participate in preparing proceedings and editing the acts issued by the Court and may be consulted at deliberations. Similarly, they are subject to the obligations listed in Article 41, which will be duly applied.

Article 49. (1) The Constitutional Court Secretariat will be managed by a head secretary, whose equivalent is the head legal adviser of the Supreme Court of Justice.

(2) The list of positions of the Court Secretariat and the number of specialized and administrative personnel will be approved by the Court plenum. The secretariat will include a documentation, research, and data processing department and other departments required by the Court activities.

(3) The head secretary will carry out his activities under the supervision of the Constitutional Court president. He will be in charge of preparing and organizing the Court proceedings.

(4) the duties of the head secretary and the personnel of the Constitutional Court Secretariat will be established under the latter's rules of organization and operation.

(5) The salaries of the personnel of the Court Secretariat will be established in keeping with the law regarding the salaries of the Supreme Court personnel.

Chapter VI Sanctions; Final and Temporary Provisions

Article 50. (1) The Constitutional Court will have its own budget, which will be part and parcel of the state budget.

(2) The draft budget will be approved by a majority vote of the Court judges and submitted to the government for verification and inclusion in the state budget.

Article 51. (1) The first Constitutional Court will be established within at most 10 days of the date of publication of the present law in Romania's MONITORUL OFICIAL.

(2) For that purpose, each Parliament House will appoint three judges for periods of three, six, and nine years in compliance with the provisions of Article 7 Paragraph

(4). The judges will be appointed in the order of the number of votes cast for each candidate. The president of Romania will also appoint three judges for similar terms.

(3) Within three days of its establishment, the Constitutional Court will elect a president and within 10 days it will pass rules of organization and operation.

Article 52. Should the Constitutional Court ascertain that an exception of unconstitutionality was unfounded and was disingenuously raised for the purpose of delaying a trial, it may sanction the side that raised the exception by a 10,000- to 100,000-lei fine.

Article 53. Refusal by a public authority or by any organization to produce information, documents, and acts requested by the Constitutional Court will be sanctioned by a fine of 10,000 lei for each day of delay.

Article 54. (1) The fines envisaged in Article 52 and 53 will be pronounced by the Constitutional Court president or by the chairman of the trial panel on the basis of an argued report.

(2) A complaint may be filed against the report within 30 days of its communication; the complaint will be resolved by the body that pronounced the fine. The report is final and must be executed. The money collected constitutes state budget revenues.

Article 55. For the year 1992 the funds required for the operation of the Constitutional Court will be provided by the government out of its budget reserve.

This law was passed by the Senate at its 13 May 1992 session in compliance with the provisions of Article 74 Paragraph (1) of Romania's Constitution.

[signed]—Academician Alexandru Birladeanu, speaker of the Senate

This law was passed by the Chamber of Deputies at its 13 May 1992 session in compliance with the provisions of Article 74 Paragraph (1) of Romania's Constitution.

[signed]—Dan Martian, speaker of the Chamber of Deputies

Bucharest, 18 May 1992
No. 47

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